



CITY COUNCIL ACTION REPORT

March 12, 2009

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Carol K. Anderson, Parks and Recreation Director

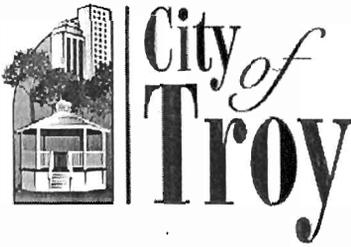
SUBJECT: Possible Tree Ordinance Revisions

Background:

- Recently, a council member indicated interest in pursuing revisions to Chapter 28 Tree Ordinance.
- At the March 2, 2009 City Council meeting, staff provided information addressing this issue. City Council members requested additional information. Attached please find:
 - Council memo submitted March 2, 2009 requesting input on desirable changes. (Attachment 1)
 - City Council resolution and agenda information from June 5, 2006 meeting regarding proposed changes to Chapter 28 Tree Ordinance and Landscape Design and Tree Preservation Standards. (Attachment 2)
 - Chapter 28 Tree Ordinance and Landscape Design and Tree Preservation Standards. (Attachment 3) from April 3, 2006 study session.
 - Tree Ordinance examples:
 - City of Rochester Hills (Attachment 4)
 - City of Taylor (Attachment 5)
 - City of Novi (Attachment 6)
 - City of Mount Clemens (Attachment 7)

Options:

- Council can take no action.
- Council can direct staff to draft revisions to the ordinance.



CITY COUNCIL ACTION REPORT

February 24, 2009

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Possible Tree Ordinance Revisions

Background:

- At the June 5, 2006 meeting, revisions to Chapter 28 (Tree Ordinance) were presented to City Council. City Council postponed indefinitely the resolution to adopt the revisions.
- At the same meeting, a motion was made to request a special task force be appointed to review the proposed revisions. The resolution failed.
- At a recent City Council meeting, a council member indicated an interest in revisions to Chapter 28 (Tree Ordinance) the Tree Ordinance.
- City Council could direct staff to draft revisions to the tree ordinance with input on the revisions/changes to be included.

Financial Considerations:

- There are no financial considerations.

Legal Considerations:

- If changes to the ordinance are adopted, the ordinance then becomes enforceable on the effective date.

Policy Considerations:

- Changes to the tree ordinance are likely to change policy regarding tree regulations, maintenance, and landscape standards for private property owners and developers.
- Should council want changes/revisions to the tree ordinance, staff requests further information on what changes may be desirable.

CHAPTER 28 TREE REGULATIONS

1. Definitions. For the purposes of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
 - (A) The word "tree" unless the context clearly indicates otherwise also means shrubs, bushes and all other woody vegetation. Specific enumeration herein is illustrative and not delimiting.
 - (B) The term "public utility" shall mean any person owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone service or telegraph service or any other means of electronic communication including the television transmission system and/or co-axial C.A.T.V. cable.
 - (C) The words "prohibited species" shall mean any tree of the following species:
 - 1) Acer Disycarpum (Silver Maple)
 - 2) Acer Negundo (Box Elder)
 - 3) Ailanthus Altissima (Tree of Heaven)
 - 4) Berberis Vulgaris (European Barberry)
 - 5) Catalpa Speciosa (Northern Catalpa)
 - 6) Juniperus Virginana (Eastern Red Cedar)
 - 7) Populus (Poplar)
 - 8) Salix (Willow)
 - 9) Ulmus Americanana (American Elm)
 - 10) Ulmus Parviflora (Chinese Elm)
 - (D) The word "Department" shall mean the Department of Parks and Recreation of the City of Troy.
 - (E) "Director" shall mean the Director of Parks and Recreation and any and all employees under his direction authorized by him to seek compliance with provisions of this Chapter.
 - (F) Provisions of this chapter, except as otherwise specifically stated herein, shall apply only to public streets, parkways, parks, and other land publicly owned or controlled by the City or to such land privately owned when such land comes within the purview of this chapter because of the maintenance or continuation of a hazard injurious to the public in general.

Chapter 28 - Tree Regulations

2. Responsibility. The Director shall be charged with the duty of enforcing the provisions of this chapter together with his duly appointed representative and employees operating under his direction. The Director shall have exclusive jurisdiction and supervision over all trees, other plants, and grassy areas planted or growing in public places.
- (A) Preserve or Remove. The Director shall have the authority and it shall be his duty to plant, trim, spray, preserve and remove trees and other plants and grassy areas in public places to insure safety or to preserve the symmetry and beauty of such public spaces.
 - (B) Order to Preserve or Remove. The Director shall have the authority and it shall be his duty to order the trimming, preservation or removal of trees or plants on private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.
 - (C) Supervision. The Director shall have the authority and it shall be his duty to supervise all work done under a permit issued in accordance with the terms of this chapter.
 - (D) Issue Conditional Permits. The Director shall have the authority to affix reasonable conditions to the granting of a permit hereunder.

(Rev. 2-28-77)

3. Permits for Tree Planting, Care, Removal.

- (A) Preserve or Remove. No person shall trim, spray, preserve or remove trees, other plants and grassy areas in public places without first filing an application and procuring a permit from the Director.
 - 1) Application Data. The application required herein shall state the number and kind of trees to be trimmed, sprayed, preserved or removed; the kind of treatment to be administered, the kind and condition of nearest trees upon the adjoining property; and such other information as the Director shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.
 - 2) Standards for Issuance. The Director shall issue the permit provided for herein when he finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory and that such action is in conformance with this chapter.
- (B) Plant. No person shall plant or set out any tree or plant in a public place without first filing an application and procuring a permit from the Director.
 - 1) Application Data. The application required herein shall state the number of trees or plants to be planted or set out, the location, grade and variety of each tree or plant, the method of planting, including the supplying of suitable soil and such other information that the Director shall find reasonably necessary to a fair determination of whether a permit shall be issued hereunder.

Chapter 28 - Tree Regulations

- 2) Standards for Issuance. The Director shall issue the permit provided for herein when he finds that the proposed plantings conform to the requirements of this chapter.
4. Public Tree Removal. The Department shall have the right to plant, trim, spray, preserve and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure safety or to preserve the symmetry and beauty of such public grounds. The Director may remove or cause or order to be removed, any tree or part thereof which is in any unsafe condition or which is prohibited species, or is affected with any injurious disease, fungus, insect or other pest. Whenever the Department shall remove any tree, plant or shrub, solely for the purpose of constructing any public work, the Director shall, if practicable, replace the same at public expense, at some nearby location by planting another tree, plant or shrub, not necessarily of the same type.
5. Duties of Private Owners. It shall be the duty of any person growing trees within the City:
 - (A) Trim. To trim his trees so as not to cause a hazard to public places or interfere with the proper lighting of public highways by the street lights, and so that a minimum clearance of any overhead portion thereof shall be eight (8) feet above the surface of the street or right-of-way. Said person shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to trim any tree or shrub on private property when it interferes with vehicular and/or pedestrian traffic in public places or the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way.
 - (B) Treat or Remove. To treat or remove any tree or plant so diseased or insect-ridden as to constitute a hazard to trees or plants in public places.
 - (C) Prohibited Species. To refrain from planting any of the following species:
 - (1) Acer Disycarpum (Silver Maple).
 - (2) Acer Negundo (Box Elder).
 - (3) Ailanthus Altissima (Tree of Heaven).
 - (4) Berberis Vulgaris (European Barberry).
 - (5) Catalpa Speciosa (Northern Catalpa).
 - (6) Juniperus Virginana (Eastern Red Cedar).
 - (7) Populus (Poplar).
 - (8) Salix (Willow).
 - (9) Ulmus Americana (American Elm).
 - (10) Ulmus Parviflora (Chinese Elm).

Chapter 28 - Tree Regulations

- (D) **Tree Protection Prior to Development.** To prevent the unnecessary destruction of trees on land where a building permit or subdivision approval has not been issued, the destruction within any five (5) year period, of more than twenty-five (25) percent of the trees on any parcel of real property within the City, without prior approval of the director shall be prohibited.

(Rev. 6-5-89)

6. **Tree Protection. For All Trees in Public Places:** No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten (10) feet of any tree or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor except by special written permit from the Director and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall, after notice thereof by the Director, promptly abate such interference in such manner as shall permit the trimming or removal of such trees by the Department.
7. **Tree Protection During Development, For all Trees in Public Places:** During any building, renovating or razing operations, the builder shall erect and maintain suitable protective barriers around all trees and also for all trees specified to be maintained on private property, so as to prevent damage to said trees and shall not allow storage of equipment, materials, debris or fill to be placed in this area except as may be necessary for a reasonable time if no other storage space is available.
8. **Excavations Near Trees.** Excavations and driveways shall not be placed within five (5) feet of any existing tree without a written permit from the Director. Any person making such excavation or construction shall guard any tree within six (6) feet thereof with a good substantial frame box to be approved by the Director and all building material and other debris shall be kept at least four (4) feet from any tree.
9. **Covering Surface Near Trees.** No person shall place within the street right-of-way any stone, brick, sand, concrete or other materials which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of authorized width and location.
10. **Regulations for Planting in a Public Place.** Work done under a permit issued hereunder shall be performed in strict accordance with the terms thereof and with the following regulations established for the planting, trimming and care of trees in public places:
- (A) Trees must not be less than one inch (1") in diameter of trunk one foot (1') above the ground.
 - (B) All trees from two (2") to four (4") inches in diameter of trunk one foot (1') above the ground must be protected and supported by tree guards.
 - (C) All cuts above one (1") high in diameter must be water-proofed.
 - (D) All trees will be planted on fifty (50') foot centers, unless a special permit is obtained from the Director.

Chapter 28 - Tree Regulations

- (E) No tree will be planted closer than three and one-half (3 1/2) feet to the curb, and no closer than three (3) feet to the sidewalk.
 - (F) No tree shall be planted on private property within thirty (30) feet of a tree planted in the right-of-way.
 - (G) No tree shall be planted within fifteen (15) feet either side of a driveway that opens onto a public street.
11. Corner Clearance. All shrubs and bushes located on the triangle formed by two (2) right-of-way lines at the intersection of two (2) streets and extending for a distance of twenty-five (25) feet each way from the intersection of the right-of-way lines on any corner lot within the city, shall not be permitted to grow to a height of more than thirty (30) inches from the established street grade, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed.
- Trees may be planted and maintained on private property in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight (8) feet above the roadway surface. Any person failing to trim any trees, shrubs or bushes in conformity with this section shall be notified by the Director in the manner provided in Section 14 of this chapter, to do so and such notice shall require trimming in conformity with this section within the time prescribed in the notice as provided in Section 14 B of this Chapter. Upon the expiration of such period, the Director may cause the trimming to be done and the cost thereof may be collected from the owner of said property as provided for in Section 14 E of this chapter.
12. Private Trees - Disease and Infestations. When the Director shall discover that any tree growing on private property within the City is affected with any dangerous and infectious insect infestation or tree disease, he shall forthwith serve a written order upon the person in the manner specified in Section 14 of this chapter, describing the tree, its location and the nature of the infestation or tree disease, and ordering the person to take such measures as may be reasonably necessary. Such order may require the pruning, spraying or destruction of trees as may be reasonably necessary. Every such order shall be complied with within ten (10) days after service thereof, or within such additional time as may be stipulated in such order as provided in Section 14 B.
13. Dutch Elm Disease. Every elm tree, regardless of species or variety, infected with the fungus *ceratostomella ulmi*, commonly called dutch elm disease, shall be removed if on public property, within ten (10) days after the Director shall learn of the condition and, if on private property within the time prescribed in the order as specified in Section 14 B. No person shall possess, sell, give away or transport any elm afflicted with the fungus *ceratostomella ulmi* nor any wood from, or parts of, any tree so afflicted, except that wood, branches and roots of any tree so afflicted may be transported to a place for burning, if first sprayed thoroughly with a solution of sevin 50% wettable solution two (2) tbs/gal. in a manner approved by the Director.
14. Procedure Upon Order to Preserve or Remove. When the director or any one under his supervision and control shall find it necessary to order the trimming, preservation, or removal of trees or plants upon private property as authorized by this chapter herein he shall serve a written order to correct the dangerous condition upon the person.

Chapter 28 - Tree Regulations

- (A) Method of Service. Such order required herein shall be served in one of the following ways.
- (1) By making personal delivery of the order to the person responsible.
 - (2) By leaving the order with some person of suitable age and discretion upon the premises.
 - (3) By mailing a copy of the order to the last known address of the owner of the premises by receipted mail.
 - (4) By affixing a copy of the order to the door at the entrance to the premises in violation.
 - (5) By publishing the order in a local paper once a week for three (3) successive weeks.
- (B) Time for Compliance. Such order required herein shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In no case shall the time limit be less than ten (10) days, except in case of extreme danger, nor more than thirty (30) days. In case of extreme danger to persons or public property and eliminate or abate the hazard or danger and assess the costs to the owner as provided in Section 14(E) of this Chapter. An extreme danger shall be described as any situation or occurrence which would cause an immediate danger to the life and limb of any person upon any public way within the City of Troy.
- (C) Appeal from Order. A person to whom such order is directed shall have the right, within forty-eight (48) hours of service of such order, to appeal to the City Manager of the City of Troy who shall review such order within five (5) working days and file his decision thereon with the City Clerk with a copy to the appellant which shall be served in any of the methods herein provided in paragraph (A) hereof, unless the order is revoked or modified it shall remain in full force and shall be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within ten (10) working days or such additional time as prescribed in the order after an appeal shall have been determined.
- In case of extreme danger, as described above, the director shall have the authority to require compliance immediately upon service of the order which expressly dictates that the matter is of extreme danger.
- (D) Failure to Comply. When a person to whom an order is directed shall fail to comply within the specified time, the director shall remedy the conditions or contract with others for such purpose and charge the costs thereof to the person to whom the order is directed. The person remedying the condition under a contract made hereunder shall be authorized to enter the premises for that purpose.

Chapter 28 - Tree Regulations

- (E) Lien Against Property. If the cost of remedying a condition is not paid within (30) days after receipt of a statement, therefore, from the City Treasurer, such cost shall be levied against the property upon which said hazard exists or existed. Levying of such cost shall be certified by the Director to the City Treasurer and shall thereupon become a lien upon such property, and shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other taxes against such property.

(Rev. 6-5-89)

15. Private Trees - Inspection. The Director and his representatives and employees shall have the authority to enter upon private premises for the purpose of examining any trees, shrubs, plants, or vines for the presence of destructive insects or plant diseases. No damages shall be awarded for the destruction of any tree, shrub, or plant or fruit or injury to the same, if done by the Director or those under his direction in accordance with this chapter.
16. Lawn Extensions. On residential streets, the abutting owner or occupants may maintain a planting strip on the lawn extension between the sidewalk and the street therein in conformity with this chapter. No person shall willfully injure or destroy any grass, flower or tree upon any such planting strip or throw papers, refuse, or any other thing thereon. No person shall drive an automobile, bicycle or any other vehicle upon or over any such planting strip.
17. Private Utilities.
- (A) Overhead Lines Trimming Permits. The Director shall grant permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the City, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the Department. Said permission, as provided for in this section, shall require reasonable prior notice to the City before any work is commenced thereunder. Provided, however, that in the event of an emergency requiring immediate maintenance work on the overhead lines of said public utilities, prior notice of commencing work under said permit shall not be required. The word "emergency" as used in this section, shall be defined to mean the occurrence or happening of an event which could not be prevented by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.
- (B) Gas Main Leakage. Gas pipes or mains within any public right-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within twenty-four (24) hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.
18. Rules and Regulations. The Director shall make such rules and regulations supplementary to this chapter not in conflict herewith, as he may from time to time deem necessary. No person shall fail to obey any rule or regulation effective hereunder.

(Rev. 3-26-79)

THEREFORE, BE IT RESOLVED, That the request from Adrian Eremie, 6881 Westaway, for waiver of Chapter 39, Section 40.66.00, of the Code of the City of Troy, to permit outdoor parking of a Chevrolet stake truck in a residential district is hereby **APPROVED** for one (1) year.

Yes: All-5
 No: None
 Absent: Broomfield, Stine

C-2 Rezoning Application (Z 704) – Proposed Dunkin Donuts, South Side of Vanderpool, West of Rochester Road and East of Ellenboro, Section 22 – R-1E to B-2

The Mayor opened the Public Hearing for public comment. The Mayor closed the Public Hearing after receiving comment from the public.

Vote on Resolution to Postpone

Resolution #2006-06-233

Moved by Lambert

Seconded by Howrylak

RESOLVED, That Troy City Council hereby **POSTPONES** Rezoning Application (Z 704) – Proposed Dunkin Donuts, South Side of Vanderpool, West of Rochester Road and East of Ellenboro, Section 22 – R-1E to B-2 until the Regular City Council Meeting scheduled for Monday, June 19, 2006.

Yes: Howrylak, Lambert, Schilling
 No: Fleming, Beltramini
 Absent: Broomfield, Stine

MOTION CARRIED

The meeting **RECESSED** at 9:12 P.M.

The meeting **RECONVENED** at 9:24 P.M.

POSTPONED ITEMS:

D-1 Adoption of City Ordinance, Chapter 28 – Tree Ordinance and the Landscape Design & Tree Preservation Standards

Resolution

Moved by Beltramini

Seconded by Schilling

RESOLVED, That Chapter 28 – Tree and Plant Ordinance, a copy of which shall be **INCLUDED** in the original Minutes of this meeting, is hereby **ADOPTED**.

Vote on Resolution to Postpone Indefinitely

Resolution #2006-06-234

Moved by Howrylak

Seconded by Lambert

RESOLVED, That Troy City Council hereby **POSTPONES INDEFINITELY** the proposed resolution, for the *Adoption of City Ordinance, Chapter 28 – Tree Ordinance and the Landscape Design & Tree Preservation Standards*, Moved by Broomfield and Seconded by Schilling.

Yes: Howrylak, Lambert, Fleming

No: Schilling, Beltramini

Absent: Broomfield, Stine

MOTION CARRIED**Vote on Resolution to Appoint a Special Task Force**

Resolution #2006-06-235

Moved by Lambert

Seconded by Fleming

RESOLVED, That Troy City Council hereby **REQUESTS** that a Special Task Force be appointed to review the proposed revisions to the Tree Ordinance and the Landscape Design & Tree Preservation Standards for the City of Troy.

Yes: Lambert, Fleming

No: Schilling, Beltramini, Howrylak

Absent: Broomfield, Stine

MOTION FAILED**CONSENT AGENDA:**

E-1a Approval of “E” Items NOT Removed for Discussion

Resolution #2006-06-236

Moved by Lambert

Seconded by Beltramini

RESOLVED, That all items as presented on the Consent Agenda are hereby **APPROVED** as presented with the exception of Item E-13, which shall be considered after Consent Agenda (E) items, as printed.

Yes: All-5

No: None

Absent: Broomfield, Stine



Memorandum

To: John M. Lamerato, Acting City Manager
From: Tonni L. Bartholomew, City Clerk
Date: June 1, 2006
Subject: Agenda Item: D-01 Adoption of City Ordinance, Chapter 28 – Tree Ordinance and the Landscape Design & Tree Preservation Standards

Due to a major re-write of Chapter 28 and a discrepancy in the original recommended motion submitted to City Council, the attached repealing resolution has been proposed in addition to the postponed adoption resolution. Due to the nature of a repealing ordinance it is recommended that the two resolutions remain separate.

Additionally, a recommended motion to postpone action on the active main motion has been provided. The intent of the postponement is to allow Council to repeal the existing ordinance, Chapter 28 - Tree Regulations, immediately prior to the adoption of active motion on the adoption of Chapter 28 – Tree and Plant Regulations Ordinance. Should it be the desire of the Council to fail the adoption of the active postponed motion, the repealing ordinance should not be considered or should also fail. If the repealing resolution is offered, and is successful, and the new ordinance is NOT adopted, Council should immediately rescind the repealing resolution.

D-1 Adoption of City Ordinance, Chapter 28 – Tree Ordinance and the Landscape Design & Tree Preservation Standards

Resolution 2006-06-
Moved by Beltramini
Seconded by Schilling

RESOLVED, That Chapter 28 – Tree and Plant Ordinance, a copy of which shall be **INCLUDED** in the original Minutes of this meeting, is hereby **ADOPTED**.

Yes:

No:

Proposed Resolution to Postpone Voting on Resolution to Provide for the Repealing of Chapter 28 - Tree Regulations Ordinance

Suggested Resolution
Resolution #2006-06-
Moved by
Seconded by

RESOLVED, That Troy City Council hereby **POSTPONES** the proposed Resolution, Adoption of City Ordinance, Chapter 28 – Tree Ordinance and the Landscape Design & Tree Preservation Standards, Moved by Broomfield and Seconded by Schilling, until after consideration the proposed Repealing of City Ordinance, Chapter 28 – Tree Regulations Ordinance Resolution.

Yes:

No:

Proposed Resolution to Repeal City Ordinance, Chapter 28 – Tree and Plant Regulations Ordinance

Resolution 2006-06-
Moved by
Seconded by

RESOLVED, That Chapter 28 – Tree Regulations Ordinance, a copy of which shall be **INCLUDED** in the original Minutes of this meeting, is hereby **REPEALED**.

Yes:

No:

CITY OF TROY
REPEAL CHAPTER 28- TREE REGULATIONS
OF THE CODE OF THE CITY OF TROY

Chapter 28, Tree Regulations of the Code of the City of Troy is hereby repealed by the Council of the City of Troy, Oakland County Michigan, at a Regular Meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI on the 5th day of June, 2006 and is effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

Louise E. Schilling, Mayor

Tonni L. Bartholomew, MMC
City Clerk

PUBLISHED: Monday, June 12, 2006

May 1, 2006

TO: John M. Lamerato, Acting City Manager

FROM: Brian P. Murphy, Assistant City Manager/Services
Carol K. Anderson, Parks and Recreation Director

SUBJECT: **Agenda Item:** *City Ordinance, Chapter 28 - Tree Ordinance and the Landscape Design & Tree Preservation Standards*

RECOMMENDATION:

City Management recommends approval of the attached revised versions of City Ordinance, Chapter 28 – Tree Ordinance as well as the Landscape Design and Tree Preservation Standards. The changes in these documents clarify ambiguous sections and include changes as outlined herein. Following the Council study session of April 3, 2006, staff reviewed the comments by Council and public comments and submits Chapter 28 – Tree and Plant Ordinance for approval and the Landscape Design and Tree Preservation Standards for review.

This item was submitted as a Green Memo on March 20, 2006 and revisions were included in the documents reviewed by City Council at their study session on April 3, 2006. Both documents have been reviewed as to form and legality by the City Attorney's office.

BACKGROUND:

The purpose of Chapter 28 is to establish procedures, and practices governing the protection, installation and long-term maintenance of trees, plants, and vegetation within the City of Troy. The Landscape Design and Tree Preservation Standards provide development standards for commercial properties and subdivisions. The following is a general outline of the functions of the two documents:

Chapter 28 – Tree and Plant Ordinance

- *Enforcement:*
- *Maintenance and planting of materials on municipal sites*
- *Responsibilities of private plant owners*
- *Responsibilities of property owner before and during development*

The Landscape Design and Tree Preservation Standards

- *Approval Process for Tree Preservation and Landscape Plans*
- *Request for Variance/Waiver*
- *Information required for review and format for submittal*
- *Tree Preservation and Protection*
- *Fees and Deposits*
- *Inspections*
- *Violations of these Standards*
- *Qualifications and Responsibilities of Individuals*
- *Plant Material Requirements, Site Preparation and Plant Installation*

STUDY SESSION COMMENTS:

The following additional changes resulted from comments by City Council and public at the April 3, 2006 Council study session:

Changes made to Chapter 28 as of 4-3-06:

Punctuation and grammatical corrections are not noted.

Section 28.01.00 – section #'s removed numbers from line items and bulleted

Section 28.02.00:

- 28.02.02 - redefined "City"
- 28.02.04 – changed (28.02.23) to (28.02.26)
- 28.02.12 – moved "Lawn Extensions" definition from 28.14.02 and added the word "public".
- Renumber definitions 28.02.13 through 28.02.28 to accommodate new definitions
- 28.02.14 – added new definition for "Municipal property".
- 28.02.15 – added new definition for "Municipal Tree".
- 28.02.18 – moved list out of definition and added to 28.06.04.
- 28.02.19 – moved following to 28.08.01 – "There shall be no undue compression of the earth or otherwise impeding or preventing the access of water or air to the root system of the plant or excavation around or removal of soil or earth or the addition of earth or any other materials within the tree protection areas. Building material and other debris shall not be placed inside the tree protection areas."
- 28.02.20d – removed the word "City" and added "owned by the City"
- 28.02.26 – changed (28.02.10) to (28.02.19).

Section 28.04.00:

- 28.04.01 – added the word "trees" and the statement "All State and Federal requirements and restrictions shall be followed when applying weed/pest control to plants in public spaces".
- 28.04.02 – changed "planting" to "installing", changed "planting" to "installation", added "necessary to determine compliance with this ordinance".
- 28.04.03 – reworded leaving amount and type of insurance open.
- 28.04.07 – changed "Plant" to "installation" and "plant" to "install"

Section 28.06.00:

- 28.06.03 – changed (28.02.17) to (28.02.20)
- 28.06.04 – relocated prohibited plant list to this section
- 28.06.04L – separated this section from main body of text and changed (LD35.01.00) to (#LD35.02.00).
- 28.06.04M - separated this section from main body of text.
- 28.06.05 – changed "plants" to "trees (4" DBH and up)" and added "prior to the application and approval by the City for development".

- 28.06.05a – added as new.
- 28.06.06 – reworded for clarity.
- 28.06.07a – added “for said work”.
- 28.06.07b – added “for said work”.

Section 28.07.06 – changed “ordinance” to “section”.

Section 28.08.00:

- 28.08.01 – added “(see 28.02.19)” and added “There shall be.....”
- 28.08.03 - changed “of” to “for”.
- 28.08.05 – changed (28.02.23) to (28.02.26).
- 28.08.06 – changed “may” to “will be allowed”.

Section 28.11.00:

- 28.11.02 – changed “shall” to “are to”
- 28.11.04 – added “All tree guards and stakes shall be removed one (1) year after installation”.
- 28.11.06 – added “stating otherwise”.
- 28.11.08 – changed from 6” to 10” to conform to other existing ordinances.

Section 28.12.00 – added “comply with the requirements of section 28.1.01 through 28.12.03”.

Section 28.13.01 – split this section out text and changed “damages” to “compensation”.

Section 28.14.00:

- Renumbered section after moving definition of “Lawn Extension” to 28.02.00.
- 28.14.02 – added the words “other than normal maintenance” & “maliciously, and/or wantonly”.
- 28.14.04 – added “of public streets” and changed “mechanically edged” to “edged”
- 28.14.05 – removed the word “major” and added “located in public spaces”.
- 28.14.07 – added “of public streets”.
- 28.14.07a – added as new.

Section 28.15.00:

- 28.15.03 – changed “as close as” to “at least
- 28.15.04 - changed “as close as” to “at least and changed “City” to “Director”.
- 28.15.05 – same as 28.15.04 and change “is involved” to “prevents the use of a larger tree”.
- 28.15.06 – changed “may be planted” to “twenty (20) feet or less are permissible plantings”.

Section 28.16.00:

- 28.16.01 – changed “any of the provisions” to “pertaining to public spaces”.
- 28.16.04 – changed “revision” to “edition”.

Section 28.17.00:

- 28.17.00 – added “she/”
- 28.17.01 – added “or a combination “
- 28.17.02 – moved “except in case of an emergency or imminent danger” to end of sentence.
- 28.17.05 – added “have the right”

Figure #1 – removed the word “Study”

Figure #3 – removed the word “Study”

Figure #5 – added “Large (50+ feet)”, “Medium (30 – 50) feet”, and “Small (15 – 30)”.

Changes made to Landscape Design & Tree Preservation Standards as of 4-3-06:



Title Page - added quote

Approval Process Outline:

1. – added “and Preliminary landscape Plans (LD6.00.00)” & “to Planning Department with Site Plan Review or Special Use Application”
5. – added “which will be forwarded to Planning and/or Building Departments.”
6. – added #6
- 17e – changed “LD34.00.00i” to “LD34.00.00j”.

Section LD1.00.00 – changed “39.30.01 – 07” to “39.30.00” and re-word last paragraph to more accurately define who this standard applies too.

Section LD6.00.00:

- LD6.00.00 – Added “Landscape” and “Preliminary Landscape plans shall be submitted as separate documents”.
- LD6.02.00g – added “(Tree Preservation plan only)”.
- LD 6.02.00l – added “tree preservation”.
- LD6.02.00M – added as new.
- LD 6.02.01 – added as new

Section LD7.00.00 – added “be submitted as one combined document”.

Section 8.00.00:

- LD8.01.00 – changed “LD8.04.00” to “LD8.01.01”.
- LD8.02.00 – changed “LD8.01.01” to “LD8.04.00”.
- LD8.02.01 – added as new.
- LD8.03.02 through LD8.03.04 added as new,
- LD8.04.04 – removed “The City reserves the right to remove these trees from the list of preserved trees” as being redundant (see LD8.04.06)
- LD8.04.05 – reworded from “Trees to be preserved shall be in good to fair condition at the time of development” to “Tree preserved shall be in good condition (as deemed by the Director) for one full year after the final acceptance (closing) of the project by the City”.
- LD 8.05.09 – added as new.

Section LD9.00.00:

- Changed “when making the submittal” to “an application is submitted”.
- Added “Special Use Approval Request, or Tentative Preliminary Plat Approval”.
- Changed “subdivision” to “project”.

Section LD10.00.00 – added “Final Tree Preservation / Landscape Plan shall be submitted as one combined document. The Final Landscape Plan shall be consistent with the Preliminary Landscape Plan used to grant Preliminary Site Plan approval by the Planning commission”.

Section LD13.00.00 – changed “commercial” to “Non-residential”.

Section LD16.00:

- LD16.00.00 – added “Plan”.
- Changed “LD16.02.00d” to “LD16.02.01”.

Section LD19.00.00 – added “Bank Letter of Credit will not be accepted for Maintenance Deposit”.

Section LD19.02.03 – added “otherwise”

Section LD20.00.00 – added “Plan”

Section LD22.03.00c – reworded to read “Additional fees as per LD18.01.00”.

Section LD23.00.00:

- LD23.05.01 – changed “28.02.23” to “28.02.26”.
- LD23.06.00a – changed “fences” to “tree protection barriers”.

Section LD28.00.00:

- LD28.03.00 & 28.04.00 – changed “has not been” to “is not”.
- LD28.05.00 – changed “this procedure” to “the procedures in this section”.

Section LD29.00.00– changed “must have prior to any landscape project coming under the control of this standards” to “are to be”.

Section LD31.00.00 – changed “must have prior to a tree preservation project coming under the control of these standards” to “are to be”.

Section LD35.00.00:

- LD35.02.00 – changed “at this time” to “As of May 8, 2006”.
- LD35.03.00 – added as new.

Section LD 37.00.00 – changed “commercial properties or subdivision” to “Site Plan Approval, Special Use Approval, or Subdivisions Plat Approval”

COMPARISON WITH OTHER COMMUNITIES:

Finally, a comparison of the proposed City of Troy Tree and Plant Ordinance with four other communities is included here. As you can see from the chart titled “**Tree Ordinance Comparison**”, the tree preservation percentages proposed for Troy are less than for the compared communities, although the Troy preservation range is greater.



Tree Ordinance Comparison

	Rochester Hills	Sterling Heights	Rochester	Brighton Twp.	Troy (proposed)
Minimum preservation % of trees	37%	37%	80%	by % canopy	30%
preservation range	6" and up	6" and up	6" and up	10" and up	4" and up
a tree relocation on site allowed	yes	yes	yes	yes	yes
b tree relocation off site allowed	yes	yes	yes	yes	yes
c tree replanting on site allowed	yes	yes	yes	yes	yes
d tree replanting off site allowed	yes	yes	yes	no	yes
City Tree Fund established	yes	yes	no	no	yes
Recommended replacement tree list provided	yes	no	no	no	yes
e Building envelope trees count toward % preserved	no	no	no		no
f Deciduous & coniferous trees included in % preserved	yes	yes	yes	yes	yes

- a - trees can be transplanted from one area to another on the same site
- b - trees can be transplanted from another site to new project
- c - reforestation of tree with new planting permitted
- d - reforestation tree can be located on a different site
- e - tree inside allowable building area can not be counted as preserved trees
- f both types of tree can be counted toward to total % of preserved trees

SUMMARY:

The purpose of Chapter 28 is to establish practices and procedures for the protection, installation, and long-term maintenance of trees, plants and vegetation within the City of Troy. Staff is confident the revisions to the ordinance make it a more understandable, and useful tool toward that purpose.

The revisions to Landscape Design and Tree Preservation Standards will assist developers with the process of landscaping their projects, while ensuring greater preservation of Troy's urban forest.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Chapter 28 - Tree and Plant Regulations

CHAPTER 28 TREE AND PLANT REGULATIONS

28.01.00 PURPOSE AND INTENT. The City acknowledges that Troy's urban forest reduces noise, air pollution, energy costs, reflected light, and flooding, stabilizes soils, sequesters carbon, provides habitat for wildlife and increases the value of all properties in the area and the overall quality of life.

It is the City's intent that the urban forest be protected, preserved and/or restored. To that end the City has created these ordinances, the *Landscape Design and Tree Preservation Standards* and the Building/Developmental Standards.

The purpose of this Ordinance is to establish procedures and practices governing the protection, installation and long-term maintenance of trees, plants and vegetation within the City of Troy. The City's purpose is to:

- Promote the beautification of the City of Troy.
- Create for present and future generations a planned pattern for the urban landscape within the City of Troy.
- Promote reasonable preservation and replenishment of landscaping on existing commercial and public properties and to provide guidelines for protection of plants.
- Safeguard and enhance property values and to protect public and private investment.
- Provide an ordinance that is reasonable and enforceable.
- Promote the awareness of the benefits of effective landscaping.

28.02.00 DEFINITIONS. For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given here. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

28.02.01 CALIPER: the diameter of the tree trunk measured at:

- a. Six (6) inches above the ground level if four (4) inches in diameter or less.
- b. Twelve (12) inches above ground if greater than four (4) inches in diameter.

28.02.02 CITY: The Municipality of the City of Troy, Michigan.

28.02.03 CLEARING: The cutting down and/or removal of plants and/or vegetation from a property whether by cutting or other means.

28.02.04 DAMAGE: Includes any intentional or negligent act which will cause plants to decline and die within a period of three (3) years, including but not limited to such damage inflicted upon the root system by the compaction of the soil within the drip line of a tree during the operation of heavy machinery; the change of the natural grade above the root system, around the drip line, or around the trunk of a plant and/or damage from injury or from fire to vegetation which results in or permits infection or pest infestation. Damage also includes application of soil within the tree protection area (Section 28.02.26) or introduction into the water source, and/or

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release of products, which move through the environment of a plant, any petroleum products, pesticides, toxic chemicals or other injurious materials.

- 28.02.05 DBH (Diameter at Breast Height): The diameter of the tree trunk measured at 4.5 feet above ground level.
- 28.02.06 DEPARTMENT: The Department of Parks and Recreation of the City of Troy.
- 28.02.07 DIRECTOR: Parks and Recreation Director and all employees under her/his direction, authorized by her/him to seek compliance with provision of this ordinance.
- 28.02.08 DRIP LINE: The drip line of a tree or plant shall be determined by measuring from the center of the trunk to the tip of the farthest branch from the trunk center. This measurement shall be used as the radius of a circle drawn around the plant with the center of the trunk being the center of the circle.
- 28.02.09 EMERGENCY: An event or events, disease, pest, or condition which has damaged or destroyed a tree or plant such that the continued presence of such damaged or destroyed tree or plant threatens public space in proximity thereto.
- 28.02.10 IMMINENT DANGER: Any situation or occurrence that would cause directly or indirectly an immediate danger to any person in a public space within the City.
- 28.02.11 GRADING: The placement, removal or movement of earth or soil on a property by use of mechanical equipment or hand equipment.
- 28.02.12 LAWN EXTENSIONS: That area between the property line and the curb/road edge of public streets/roads.
- 28.02.13 LISTED SPECIES: Any plant that is endangered or threatened or is a species of special concern as listed on the Federal Inventory List or Michigan Natural Features Inventory List (MNFI), which is maintained by the Michigan Natural Heritage Program and/or the Michigan Land Conservancy.
- 28.02.14 MUNICIPAL PROPERTY: All land, structures, facilities, and plants, owned by the municipality of the City of Troy.
- 28.02.15 MUNICIPAL TREE: Any tree owned by the municipality of Troy and located on municipal property.
- 28.02.16 PEST: The full range of dangerous; destructive; or infectious organisms, insects, diseases, pathogens and/or conditions which attack or effect plants or which hinder their development as horticultural subjects. This shall include but not be limited to all biotic and/or abiotic agents.
- 28.02.17 PLANT(s): Any tree, shrub, bush, perennial, annual, grass or other vegetation, native or introduced.
- 28.02.18 PROHIBITED PLANTS: Plants that shall not to be planted within the municipal boundaries of the City. (Refer to Temporary Banned Plants in the *Landscape Design and Tree Preservation Standards*, Section LD 35.02.00.)

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- 28.02.19 **PROTECTIVE BARRIER:** (figure #1) a minimum four (4) foot tall plastic mesh barrier constructed at the drip line of the plant to protect the root system and/or trunk of the plant from damage caused by but not limited to: construction, vehicular traffic, storage of equipment, debris, soil, fill or other materials.
- 28.02.20 **PUBLIC NUISANCE:** Any plant:
- a. With an infectious disease or pest problem that may infect municipal trees.
 - b. That is dead or dying that has the potential to fall into public spaces.
 - c. Or limb of any plant that obstruct street lights, traffic signs, free passage of pedestrians or vehicles.
 - d. That poses a threat to the safety of individuals in public spaces or poses a threat to property owned by the City.
- 28.02.21 **PUBLIC SPACES:** Public streets, rights-of-way, alleys, avenues, lanes, parkways, sidewalks, walkways, trails, parks, open spaces, lots, retention/detention ponds, drains, streams, museums, bridges, parking lots, or paths within the City and all other lands controlled or publicly owned by the City or such land privately owned when such land comes within the purview of this ordinance because of the maintenance or continuation of any hazards injurious to property, or individuals in public spaces or the public interest.
- 28.02.22 **PUBLIC UTILITY:** Any person, corporation or organization owning or operating any pole, pipe, tower, satellite dish or conduit located in any public space or over or along any public easement or rights-of-way for the transmission of electricity, gas, telephone service, inter-net service, or any other means of electronic communication including the television transmission system and/or coaxial C.A.T.V. cable.
- 28.02.23 **ROOT SYSTEM:** The part of the plant, located within the plants drip line, usually but not always underground that holds the plant in position, drawing water and nutrients from the soil.
- 28.02.24 **STREET TREE:** Any tree growing in the rights-of-way of the City of Troy. These trees are generally but not always located between the sidewalk/curb or in the street islands/medians.
- 28.02.25 **TREE:** Any self-supporting woody plant having one or more defined stems or trunks with a DBH of 1.25 inches or more and having a defined crown which customarily attains a mature height of eight (8) feet or greater.
- 28.02.26 **TREE PROTECTION AREA:** The space between the protective barrier and the trunk of the plant (Section 28.02.19 and figure #1). Building material and other debris shall not be placed inside the tree protection area.
- 28.02.27 **TRUNK:** The main stem or body of a plant, to be considered apart from its root system and branches. In the case of a multiple trunked plant, the stem with the largest caliper shall be used for the purpose of this ordinance.
- 28.02.28 **TOPPING (also known as: Dead Heading and Severe Crown Reduction):** The reduction of the overall size of a tree and/or the severe internodal cutting back of

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branches or limbs to stubs within the trees crown to such a degree so as to remove the normal tree canopy and disfigure the tree. Topping is not a form of pruning.

- 28.03.00 RESPONSIBILITY: The Director shall be charged with the duty of enforcing the provisions of this ordinance and shall have exclusive jurisdiction and supervision over all plants planted or growing in public spaces.
- 28.03.01 MAINTAIN, PRESERVE OR REMOVE: The Director shall have the authority and it shall be the Director's duty to plant, trim, spray, preserve and remove trees and other plants and grassy areas in public spaces to insure safety or to preserve the design intent of such public spaces.
- 28.03.02 Unless otherwise directed by this or other City Ordinance, the Director is not required to notify the public of any actions taken when enforcing the provisions of this ordinance.
- 28.03.03 ORDER TO MAINTAIN, PRESERVE OR REMOVE: The Director shall have the authority and it shall be her/his duty to order the maintenance, preservation or removal of trees or plants on private property when she/he shall find such tree or plant to constitute a public nuisance.
- 28.03.04 UNLAWFUL INTERFERENCE: It shall be unlawful for any person to prevent, delay or interfere with the City tree crew, or City contractors while they are engaged in the planting, cultivating, mulching, pruning, spraying, treating, transplanting, or removing any tree on municipal property as authorized in this ordinance.
- 28.03.05 ISSUE CONDITIONAL PERMITS: The Director shall have the authority to affix reasonable conditions to the granting of a permit issued in accordance with the terms of this ordinance. Permits issued under this Ordinance shall be obtained through the Department of Parks and Recreation. Any conditions granted by the Director shall be based on current City policies.
- 28.03.06 SUPERVISION: The Director shall have the authority and it shall be her/his duty to supervise all work done under a permit issued in accordance with the terms of this ordinance.
- 28.04.00 PERMITS FOR PLANTING, CARE AND REMOVAL OF PLANTS-PUBLIC SPACES: The Director shall be charged with the duty of issuing and enforcing permits issued to residents, individuals, groups, organizations, companies, and/or corporations for the planting, care and removal of plants in public spaces.
- 28.04.01 PRESERVE, REMOVE OR TREAT: No person shall trim, spray, transplant, remove or cause/authorize any person to trim, spray, transplant, or remove trees, plants or grassy areas in public spaces without first filing an application and procuring a permit from the Director. This excludes the treatment of turf grasses, trees and plants in the Lawn Extensions (Section 28.14.00) with weed/pest control and fertilizer when done in conjunction with the adjoining private areas. All State and Federal requirements and restrictions shall be followed when applying weed/pest control to plants in public spaces.
- 28.04.02 APPLICATION DATA: The application required by this ordinance shall state the

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- number, size and variety of plants to be trimmed, sprayed, preserved, transplanted, or removed; the kind of treatment to be utilized, the kind and condition of nearest plants upon the adjoining property. If installing, the application shall include drawings which indicates the variety and number of each plant type, the location, plant grade, and method of installation, including the supplying of suitable soil or soil amendments. When deemed necessary Director reserves the right to request additional information necessary to determine compliance with this ordinance.
- 28.04.03 INSURANCE: Before any permit shall be issued, each applicant shall first contact the City Risk Manager who will set actual amounts and types of insurance required for proposed work.
- 28.04.04 STANDARDS FOR ISSUANCE: The Director shall issue the permit provided for in this ordinance when it is found that the desired action or treatment is necessary, effective, and appropriate and that the proposed method and workmanship is satisfactory and that such action is in conformance with this ordinance, the *Landscape Design and Tree Preservation Standards* and *City Developmental Standards*.
- 28.04.05 PERMIT ISSUANCE: This permit shall be issued at the Department of Parks and Recreations, in the Troy Community Center – 3179 Livernois, Troy, MI 48083-5029.
- 28.04.06 REVOKING PERMIT: The Director may revoke a permit when the permit holder refuses or neglects to comply with any of the provisions of this ordinance, the *Landscape Design and Tree Preservation Standards*, or specific conditions outlined in the permit.
- 28.04.07 INSTALLATION: No person shall install or set out any tree or plant in public spaces without first filing an application and procuring a permit from the Director.
- 28.04.08 NOTICE OF COMPLETION: A notice of work completion concerning all plantings, transplanting, removals, pest control or major pruning shall be given by the permit holder, within five (5) days of completion of the permitted work, to the Director for inspection and approval. Permit holder will be notified of any required corrections, changes, alterations, or deficiencies. Notification shall include scheduling for required work.
- 28.05.00 PLANT REMOVAL - PUBLIC SPACES: The Director shall be charged with the duty of removing or ordering removal of plants in public spaces:
- 28.05.01 The Department shall have the right to remove trees and/or plants in public spaces as may be necessary to ensure safety or to preserve the design intent of such public spaces.
- 28.05.02 The Director may remove or cause or order to be removed, any tree or plant or part thereof which is in any unsafe condition or which is a prohibited species, or is affected with any injurious disease, fungus, pest, or otherwise be considered by the City to be a public nuisance.
- 28.05.03 Whenever the Department shall remove a plant, solely for the purpose of

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constructing any public work, the Director shall, if practical, replace the same at public expense, at some nearby location by planting another plant, but not necessarily of the same type or size.

28.06.00 DUTIES OF PRIVATE PLANT OWNERS: It shall be the duty of any person, organization, company, group, association, or corporation growing trees and plants within the City to:

28.06.01 TRIM: To trim her/his trees and plants so as not to cause a hazard to public spaces or interfere with the proper lighting of public spaces by the streetlights.

- a. Any overhead portions of a plant/tree shall be a minimum of eight (8) feet above the surface of the street, sidewalk, trail system, or rights-of-way, which ever has the highest elevation and a minimum of one (1) foot off sidewalk (figure #4).
- b. All private plants shall be pruned so that the above ground portions do not extend beyond the property line into public spaces.
- c. Said person shall remove all dead, diseased, or dangerous trees and plants, or broken or decayed limbs which constitute a menace to the safety of the public in public spaces or which the City would otherwise consider a public nuisance.
- d. Plants installed in the Corner Clearance Zone (figure #2 and Section 28.12.00) shall be pruned and maintained to a height not to exceed thirty (30) inches above established street grade for shrubs and the lowest branch on a tree shall be eight (8) feet above the established street grade.
- e. Private trees planted within thirty (30) feet of municipal property shall be pruned to allow the natural growth and development of the municipal tree.

28.06.02 CITY TRIMMING: The City shall have the right to trim any trees and plants on private property which interfere with vehicular and/or pedestrian traffic in public spaces or the proper spread of light along the street from street lights, or interferes with visibility of any traffic control device / signs or would otherwise be considered by the City to be a public nuisance. Such trimming is to be confined to that work deemed necessary by the City to eliminate the interference or public nuisance. Property owner will be given 24 hours notice prior to removals unless need for removal is created by an emergency or an imminent danger. The Property owner shall pay all costs incurred by the City.

28.06.03 PRIVATE PLANTS - DISEASED, INFESTED, DAMAGED, DEAD, OR CREATING A HAZARD: When the Director shall discover any tree or plant on private property within the City is creating a public nuisance (Section 28.02.20), the Director shall serve an order upon the property owner in the manner specified in Section 28.17.00 of this ordinance. This order shall describe the tree or plant, its location and condition and order the property owner to take such measures as may be reasonably necessary. Such order may require the pruning, spraying or destruction and/or removal of the tree or plant. Such order may indicate the manner of disposal for all debris created by the required destruction and removal. Every such order shall be completed within ten (10) business days after the notice has been issued, or within such time as may be stipulated in such order as provided in Section 28.17.02. In the event of an emergency or imminent danger situation the Director shall have the authority to take immediate action as is necessary to abate the situation. The Property owner shall pay all costs incurred by the City. The City does

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not chip private plant debris.

28.06.04 PROHIBITED PLANTS: The general public, individuals, groups, organizations, or corporations shall not plant or cause to be planted any of the following plants within the municipal boundaries of the City.

- | | | |
|----|-----------------------------|---|
| a. | Acer saccharinum | Silver Maple |
| b. | Acer negundo | Box Elder |
| c. | Acer platanoides | Norway maple |
| d. | Ailanthus altissima | Tree of Heaven |
| e. | Catalpa speciosa | Northern Catalpa |
| f. | Fraxinus spp. | Ash, all forms |
| g. | Paulownia tomentosa | Royal Empress Tree |
| h. | Populus spp. | Poplar / Cottonwood |
| i. | Pyrus calleryana 'Bradford' | Bradford Pear |
| j. | Salix spp. | Willow (excluding shrub forms) |
| k. | Ulmus | Elm (excluding cultivars of U. parvifolia and U. americana) |

l. Refer to Temporary Banned plants in the *Landscape Design and Tree Preservation Standards* Section LD35.02.00.

m. The Director, on a case-by-case basis, can approve exceptions to this prohibition. Approval by the Director shall be based on current City policies.

28.06.05 TREE AND PLANT PROTECTION PRIOR TO DEVELOPMENT: To prevent the unnecessary destruction of trees (4" DBH and up), and/or listed species on land, prior to the application and approval by the City for development, the destruction within any five (5) year period, of more than twenty-five (25%) percent of the trees on any parcel of real property within the City, without prior approval of the Director shall be prohibited (Sections 28.08.00, 28.16.02 and *Landscape Design and Tree Preservation Standards* and the *City's Developmental Standards*).

a. This ordinance does not apply to lots platted when proposed for development as originally platted or to land parcels equal to or smaller than one half (1/2) acre in size for single family residence.

28.06.06 CHIPPING OR REMOVAL OF PLANT DEBRIS: The City does not chip or remove leaves, limbs, stems, logs, roots, or any other debris created by private plant owners or their agents while during the maintenance or plant removals required by this ordinance.

28.06.07 PLANT DEBRIS DISPOSAL: No individual, group, organization, company, or corporation shall:

- Dispose in the City, plant debris, and/or by-products of plants (lumber, logs, firewood, mulch, chips, leaves, etc.) from private or public plants that contains dangerous, destructive or infectious pests without first obtaining a permit for said work.
- Dispose on municipal property any plant debris, and/or by-products of plants (lumber, logs, firewood, mulch, chips, leaves, etc.) from private or public plants without first obtaining a permit for said work.

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- c. The Director shall have the authority to affix conditions to the granting of the permit issued in accordance with the terms of this ordinance. Affixed conditions shall be based on current City policies.

28.07.00 PLANT PROTECTION - PUBLIC SPACES: It shall be the duty of any and all residents, individuals, groups, organizations, companies, and/or corporations within the City to protect plantings in public spaces so that:

28.07.01 No person shall damage, break, injure, mutilate, kill, destroy, transplant, remove, or otherwise deface any plant, or set any fire within ten (10) feet of the drip line or permit any fire, or the heat from a fire, to injure any portion of any plant. No toxic chemicals or other injurious materials shall be allowed to seep, drain, or be emptied on, near, or about any plant.

28.07.02 No electric wires or any other lines or wires shall be permitted to come in contact with any plant in any manner that shall cause damage to the plant and no person shall attach any electrical insulation to any plant.

28.07.03 No person shall use any plant as an anchor except by special written permit from the Director and no material shall be fastened to or hung on any plants in public spaces.

28.07.04 No person shall install, remove, or injure any guard or device placed to protect any trees unless in conjunction with removal or relocation for which a permit issued under Section 28.04.00.

28.07.05 All persons having under their care, custody or control, personal property which may obstruct with the trimming, care, removal or planting of any plant, shall, after notice by the Director, promptly abate, prior to the time requirement given in said notice, such obstruction in such manner as shall permit the trimming, care, removal or planting of such plants by the Department.

28.07.06 At no time will the practice of topping be considered appropriate or normal practice for any person, firm or City department. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the Director. This determination shall be based on current City policies.

28.08.00 PLANT PROTECTION DURING DEVELOPMENT - PUBLIC AND PRIVATE PROPERTY: It shall be the duty of any residents, individuals, groups, organizations, companies, developers, and/or corporations developing property within the City to protect plantings so that:

28.08.01 During any building, exterior renovation or razing operations, the developer/builder shall erect and maintain suitable protective barriers (Section 28.02.19) around all trees, plants, on public spaces and on private property, so as to prevent damage to plants and/or areas intended for preservation. (figure #1). There shall be no undue compression of the earth or otherwise impeding or preventing the access of water or air to the root system of the plant or excavation around or removal of soil or earth or the addition of earth or any other materials within the tree protection area (Section 28.02.26). Building material and other debris shall not be placed inside the tree protection area.

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- 28.08.02 Protective barriers shall not be relocated or removed without prior approval of the City.
- 28.08.03 Silt screen or other acceptable measures shall be placed up slope for the protective barriers. This silt protection barrier shall shield the area for preserved trees or plants from soil sedimentation intrusion into the tree protection area.
- 28.08.04 Where root loss will occur, root prune one foot beyond the protective barriers using a vibrating saw or narrow trencher to make clean cuts. Cutting instrument shall have sharp blades to minimize damage. Back fill immediately and cover with three (3) inches of mulch.
- 28.08.05 When, in isolated incidents, as determined by the City, protective barriers may be impractical or ineffectual in protecting roots in the tree protection area (Section 28.02.26), the Developer shall provide temporary buffers as approved by the City to prevent root damage.
- 28.08.06 Pruning of preserved trees during development shall be limited to the removal of dead, dying, and/or damaged branches. Where necessary the Developer may, with City permission, prune trees to accommodate construction activities. Upon completion of the development, overall pruning to enhance the quality of the trees will be allowed under the guidance and supervision of the City.
- 28.09.00 EXCAVATIONS NEAR PLANTS - PUBLIC SPACES: It shall be the duty of any residents, individuals, groups, organizations, companies, developers, and/or corporations working or owning property within the City to protect plantings in public spaces so that:
- 28.09.01 EXCAVATIONS AND DRIVEWAYS: Excavations and driveways shall not be placed within fifteen (15) feet of any existing tree without written permit from the Director. Any person making such excavation or construction shall erect and maintain a suitable protective barrier around the tree (figure #1). Building material and other debris shall not be placed inside the tree protection area (Section 28.02.23).
- 28.09.02 IRRIGATION SYSTEMS, INVISIBLE DOG FENCES, OR ANY UNAUTHORIZED UNDERGROUND INSTALLATION: The City shall not be responsible for damages to irrigation systems, invisible dog fences or any unauthorized underground installation installed in public spaces by private parties.
- 28.10.00 COVERING THE SURFACE NEAR TREES - PUBLIC SPACES: No person shall place within the public space any soil, stone, brick, sand, concrete, or other materials, which will in any way impede the full and free passage of water, air or fertilizer to the root system of any plant in a public space, except a sidewalk or driveway of authorized width and location.
- 28.10.01 This does not preclude the use of organic mulches, and/or geo-textile fabric.
- 28.11.00 REGULATIONS FOR NEW PLANTING - PUBLIC SPACES: Work other than that in Section 28.08.00 shall be done under a permit issued (Section 28.04.00) in accordance with this ordinance, the *Landscape Design and Tree Preservation Standards*, and City Developmental Standards, shall be performed in strict accordance with the listed terms and with the following regulations for the planting,

Chapter 28 - Tree and Plant Regulations

trimming and care of trees and plants in public spaces:

- 28.11.01 Trees must have a caliper of 1.5 inches or more for bare rootstock and 2.5 inches or more for container grown/balled and burlapped stock.
- 28.11.02 Tree types are to be selected from Parks and Recreations *Recommended Deciduous Trees for Troy* list unless otherwise approved by the Director. Approval by the Director shall be based on current City policies.
- 28.11.03 All replacement plants other than trees shall be a minimum of:
- a. Four (4) inch pot for perennials and non-turf grasses
 - b. One gallon for all shrubs.
- 28.11.04 All trees with a caliper of two (2) inches or greater must be protected and supported by tree guards (figure #3). All tree guards and stakes shall be removed one (1) year after installation.
- 28.11.05 In rights-of-way, all trees shall be planted on fifty (50) foot centers, unless a special permit is obtained from the Director (Section 28.04.00). All other plantings on municipal properties shall conform to the City's Developmental Standards. Permit approval by the Director shall be based on current City policies.
- 28.11.06 All trees shall be centered between the sidewalk and curb unless the Director issues a permit stating otherwise. Where no sidewalk and/or curb exist, the Director shall approve planting locations. Permit approval by the Director shall be based on current City policies.
- 28.11.07 No tree shall be planted within fifteen (15) feet either side of a driveway that opens onto a public street.
- 28.11.08 No plant that exceeds thirty (30) inches in height above the lowest established street grade, shall be planted within fifteen (15) feet either side of a driveway that opens onto a public street.
- 28.11.08 Other than turf grasses, no trees or plants shall be planted within fifteen (15) feet of any fire hydrant or as to obstruct the fire hydrant when viewed from the street. Turf grasses planted around a fire hydrant shall be maintained at a mowed height of ten (10) inches or less.
- 28.11.09 No tree shall be planted on private property within thirty (30) feet of a tree planted in the rights-of-way.
- 28.11.10 All planting shall be done in accordance with Park and Recreation planting specifications (figure #3).
- 28.11.11 All plantings shall conform to Corner Clearance (Section 28.12.00).
- 28.12.00 CORNER CLEARANCE (VISUAL BARRIER SETBACK): Property owners in the City shall comply with the requirements of Sections 28.12.01 through 28.12.03.
- 28.12.01 In order that the view of the driver of a vehicle approaching a street intersection is not obstructed, all plants located on the triangle formed by two (2) rights-of-way lines

Chapter 28 - Tree and Plant Regulations

- at the intersection of two (2) streets and extending for a distance of twenty-five (25) feet each way from the intersection of the rights-of-way lines on any corner lot within the City, shall not be permitted to grow to a height of more than thirty (30) inches from the lowest established street grade, along the legs of the fore mentioned triangle (figure #2).
- 28.12.02 Trees may be planted and maintained the corner clearance area, provided that all branches are trimmed for a vertical height of eight (8) feet above the highest established street grade perpendicular to the tree trunk.
- 28.12.03 Any person failing to trim any plants to conformity with this ordinance shall be notified by the Director in the manner provided in Section 28.17.01 of this ordinance. Such notice shall require trimming or removal in conformity with this ordinance within the time prescribed in the notice as provided in Section 28.17.02 of this ordinance. Upon the expiration of such period, the Director may cause the trimming or removal to be done and the cost thereof may be collected from the owner of said property as provided in Section 28.17.06 of this ordinance.
- 28.13.00 PRIVATE PLANT – INSPECTION: The Director shall have the authority to enter upon private property for the purpose of examining any plants, for the presence of pests and/or to determine if an emergency or imminent danger situation exists.
- 28.13.01 No compensation shall be awarded for the destruction of any plant, fruit, or injury to the same, if done by the Director in accordance with this ordinance.
- 28.14.00 LAWN EXTENSIONS and SUBDIVISION ENTRY ISLANDS/CUL-DE-SAC ISLANDS: Property owners in the City are charged with the responsibility of maintenance of public spaces adjacent to their property as follows:
- 28.14.01 Property owners and/or occupants shall maintain the lawn extensions (Section 28.14.02) that abut their property and/or the street island directly in front of their property in a neat and orderly manner in compliance with City ordinances. At no time shall property owners and/or occupants allow poison ivy, ragweed or any other poisonous, noxious, or unhealthy growths to occur in the lawn extensions or street island in their care.
- 28.14.02 Other than normal maintenance, no person shall willfully, maliciously, and/or wantonly injure, destroy, remove, or transplant any plants, or grasses on any lawn extension / street island or throw papers, refuse, or any other thing thereon.
- 28.14.03 For other than turf type grasses; the property owner and/or occupants shall apply for a permit to plant in these areas (Section 28.04.00). A proposed maintenance schedule and intended maintained size of the plants shall be provided when applying for permit.

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- 28.14.04 All paved surfaces in the lawn extensions and islands of public streets shall be edged on a regular basis to maintain clean exposed edges and no dirt or other debris shall be allowed to collect on paved surfaces.
- 28.14.05 Property owners and/or occupants are not responsible for tree maintenance in the lawn extensions and islands located in public spaces.
- 28.14.06 Any plantings by developers, property owners, occupants, homeowner's associations, or agents thereof shall conform to Section 28.11.00.
- 28.14.07 When necessary based on street layout, additional properties may be required to maintain any street islands of public streets. The Director shall review and assign responsible properties on a case-by-case basis. Assignments by the Director shall be based on current City policies.
- a. Residents shall be notified of new assignments by one of the methods outlined in Section 28.17.01 a through d.
- 28.15.00 **TREE SPACING:** To promote the awareness of the benefits of effective landscaping in the City, the following planting information has been prepared for trees planted on private or municipal property:
- 28.15.01 The City strongly encourages all trees planted on private property conform to Parks and Recreation's *Recommended Deciduous Trees for Troy* list.
- 28.15.02 No tree shall be planted on private property within thirty (30) feet of a tree planted in the rights-of-way.
- 28.15.03 **LARGE TREES:** Trees that will attain a mature height over fifty (50) feet and at least thirty-five (35) feet wide. These trees should be spaced at least thirty-five (35) feet apart on private property (unless otherwise directed by City Ordinances and/or standards) and at least fifty (50) feet apart on public spaces.
- 28.15.04 **MEDIUM TREES:** Trees that will attain a mature height of thirty (30) to fifty (50) feet and at least twenty-five (25) feet wide. These trees should be spaced at least twenty-five (25) feet apart on private property (unless otherwise directed by City Ordinances and/or standards) and at least forty (40) feet apart on public spaces if approved by the Director.
- 28.15.05 **SMALL TREES:** Trees that will attain a mature height of fifteen (15) to thirty (30) feet and at least fifteen (15) feet wide. These trees should be spaced at least fifteen (15) feet apart on private property (unless otherwise directed by City Ordinances and/or standards) and at least thirty (30) feet apart on public spaces if approved by the Director. Under no circumstance shall a small tree be considered for use as a street tree unless an overhead utility prevents the use of a larger tree.
- 28.15.06 All trees shall have the following setbacks from an overhead utility lines (figure #5):
- a. Large trees shall be planted no closer than fifty (50) feet from the outer most utility line.
- b. Medium trees shall be planted no closer than forty (40) feet from the outer most utility line.

Chapter 28 - Tree and Plant Regulations

- c. Small trees twenty (20) feet or less are permissible plantings directly under utility lines.
- 28.16.00 VIOLATION OF TREE AND PLANT REGULATIONS: Except as otherwise provided, any resident, person, group, organization, company, firm or corporation violating the provisions of this Chapter is responsible for a Municipal Civil Infraction and subject to the provisions of Chapter 100 of the Code of the City of Troy.
- 28.16.01 PENALTIES FOR UNAUTHORIZED REMOVALS OF PLANTS - PUBLIC SPACES:
- a. Any person violating or causing to be violated any of the provisions pertaining to public spaces including but not limited to any person cutting down or removing trees or plants without personally seeing a copy of a valid permit authorizing such cutting down or removal of the trees or plants shall be subject to a fine of up to \$500.00 per offense, depending on the commercial and/or historical value of such trees and plants.
 - b. Each tree or plant destroyed or removed in violation of this ordinance shall be considered a separate offense.
 - c. In the case of unauthorized removal or destruction of trees or plants, in addition to the fine, each plant destroyed or removed in violation of this ordinance shall be replaced with another like tree or plant. If the responsible party is unable to locate similar sized, type, or quality plant materials, she/he may request a variance from the Director. If the Director grants a variance, the party replacing the plants will pay the City the cost difference between the value of the destroyed plant and the value of the replacement. The latest revision of the Guide For Plant Appraisals as published by the International Society of Arboriculture shall be used to determine the value of the destroyed plant. Variances approved by the Director shall be based on current City policies.
- 28.16.02 PENALTIES FOR UNAUTHORIZED REMOVALS OR DAMAGE TO PLANTS DURING OR BEFORE DEVELOPMENT- PUBLIC SPACES AND PRIVATE PROPERTY: Performing any plant removals and/or damaging any plants designated for preservation during development or on sites not yet designated for development (Section 28.06.05), found to be in violation of this Ordinance, *Landscape Design and Tree Preservation Standards* or any other developmental standards shall result in the following penalties:
- a. Payment of the Tree Preservation / Landscape Review Penalty Fee as found in Chapter 60.
 - b. Replacement of trees and plants by the property owner will be required when any removal is in violation of this ordinance, and/or the *Landscape Design and Tree Preservation Standards*. Replacement tree varieties shall be selected from the City's *Recommended Deciduous Trees for Troy* list.
 - c. The property owner must submit for approval a list of replacement plant varieties for review by the City. Approval of the list of replacement plant varieties shall be based on current City policies.
 - d. Property owner will be required to replace trees at a rate of three (3) caliper inches for each inch DBH lost.

Chapter 28 - Tree and Plant Regulations

- e. Amount of inches DBH lost will be determined by:
 - 1. City approved Tree Preservation plan if previously submitted and approved prior to removals, otherwise refer to Section 28.16.02f2.
 - 2. Onsite inspection by City Staff. If staff is not able to make an accurate assessment due to site conditions, refer to Section 28.16.02f3.
 - 3. Inches of DBH lost will be assessed at a rate of 1089 inches DBH per acre.
 - 4. Or any combination of above as determined necessary by City Staff to make a reasonable assessment of lost inches DBH.
- f. All replacement trees shall have a minimum caliper size of four (4) inches.
- g. All replacement plants other than trees shall be a minimum of:
 - 1. One (1) gallon for perennials and non-turf grasses
 - 2. Five (5) gallon for all shrubs
- h. Planting locations for replacement plants shall be staked by the property owner and approved by the Director before any replacement plantings occur. Location approvals shall be based on current City policies.
- i. Replacement plantings shall conform to "American Standard for Nursery Stock".
- j. Plants selected for use as replacements shall be free from injury, pests, diseases, and nutritional disorders, root defects and must be in good vigor. The Director reserves the right to reject any or all plants used as replacements. All rejected plants shall be removed from the site. Rejection of plants shall be based on this ordinance and current City policy.
- k. All replacement plants shall carry a two-year unconditional guarantee.
- l. All replacement plants shall be planted as per Parks and Recreation specification. Copies of these specifications shall be obtained from the Director.
- m. All plantings shall conform to the *Corner Clearance* outlined in Section 28.12.00 of this ordinance.

28.16.03 **FAILURE TO MAINTAIN APPROVED PLANTINGS IN PUBLIC SPACES:** Approved plantings in public spaces found to be poorly maintained shall, upon order by the City, be removed by the parties responsible for the maintenance and the site restored to turf or other City approved ground cover (plants or mulch). Failure to comply, refer to Section 28.17.05.

28.16.04 **PENALTIES FOR DAMAGING PLANTS - PUBLIC SPACES:** Any person or persons who cause damage to any City trees and/or plants by the improper use of any machines, automobile, chemicals, or other activities shall be held liable for damages to said trees and plants. Damages shall be corrected, repaired and/or replaced by the Department as instructed by the Director. All costs incurred by the City for corrections, repairs, and replacements including administrative and process

Chapter 28 - Tree and Plant Regulations

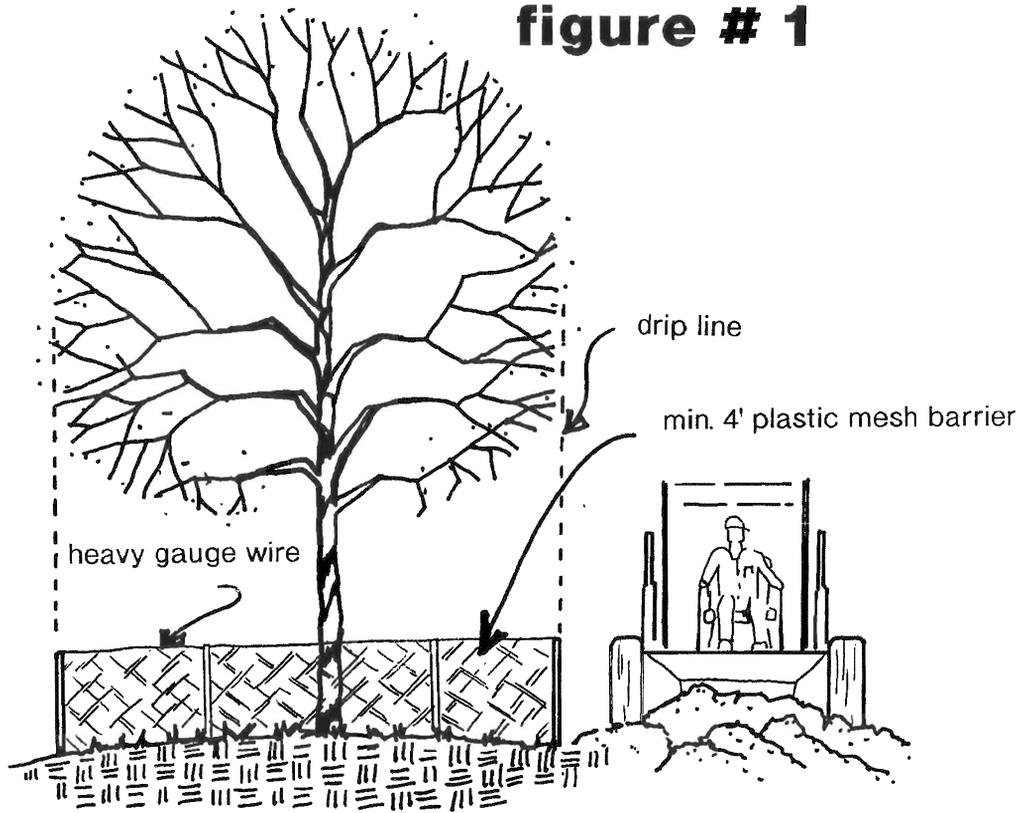
costs, shall be billed to the person or persons responsible for the damages. Should the City choose not to replace damaged plants, the person or persons responsible for said damage shall be billed for the value of the plants as determined in accordance with the latest edition of the Guide for Plant Appraisal (issued by the Council of Tree and Landscape Appraisers) and/or cost estimates for repairs/replacement, including all administrative costs.

- 28.17.00 PROCEDURE FOR ORDERING ACTION ON VIOLATIONS OF TREE AND PLANT REGULATIONS: When the Director shall find it necessary to order the trimming, preservation, spraying or removal of plants on private property or in public spaces, as authorized by this ordinance she/he shall serve a written order on the property owner in which the necessary corrections and time limits are listed.
- 28.17.01 Such order required herein shall be served in one or a combination of the following manners:
- a. By making personal delivery of the order to the property owner.
 - b. By leaving the order with some person of suitable age and discretion upon the premises.
 - c. By mailing a copy of the order to the last known address of the owner of the property by registered mail.
 - d. By affixing a copy of the order to the door at the entrance to the premises in violation.
 - e. By publishing the order in a local paper once a week for three (3) successive weeks.
- 28.17.02 TIME FOR COMPLIANCE: Such order shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In no case shall the time limit be less than ten (10) business days, nor more than thirty (30) calendar days, except in case of an emergency or an imminent danger. In case of emergency or imminent danger the City shall eliminate or lessen the hazard and assess the costs to the owner as provided in Section 28.14.11 of this ordinance.
- 28.17.03 NOTICE OF COMPLIANCE: Cited individual shall send a notice of compliance within five (5) days of completion of work to the Director for her/his inspection of completed work.
- 28.17.04 APPEAL FROM ORDER: A person to whom such an order is directed shall have the right, within forty-eight (48) hours of service of such order, to appeal to the City Manager, of the City of Troy who shall review such order within five (5) business days and file her/his decision with the City Clerk with a copy to the Director of Parks and Recreation and to the appellant which shall be served in any of the methods provided in Section 28.17.01; unless the order is revoked or modified it shall remain in full force and shall be obeyed by the person to whom it is directed. No person to whom the order is directed shall fail to comply with such order within ten (10) business days or such additional time as prescribed in the order after an appeal shall have been determined. In the case of imminent danger, as described above, the Director shall have the authority to require compliance immediately upon service of the order which expressly dictates that the matter is of imminent danger.

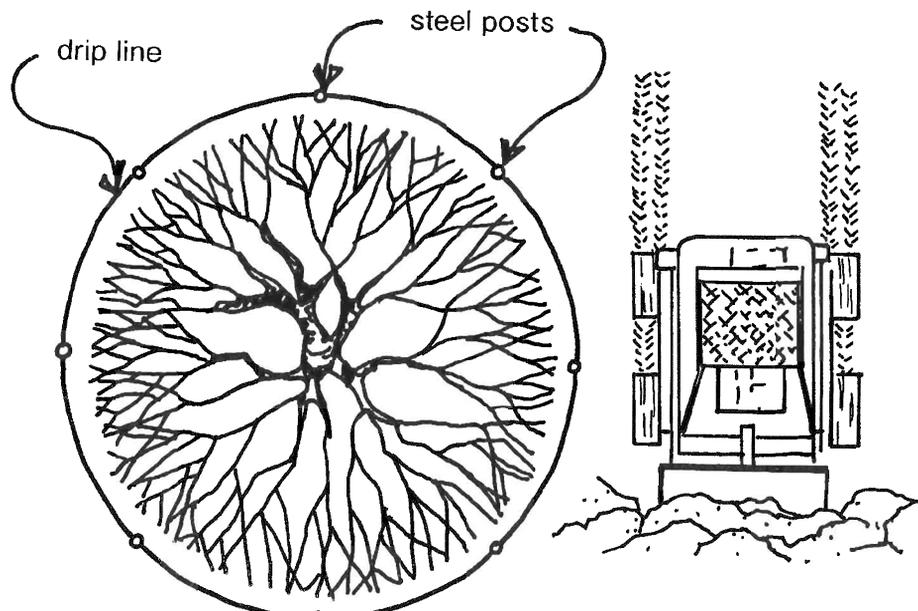
Chapter 28 - Tree and Plant Regulations

- 28.17.05 FAILURE TO COMPLY: When a person to whom an order is directed shall fail to comply within the specified time, or in the specified manner, the Director shall have the right to remedy the conditions or contract with others for the purpose and charge the costs thereof to the person to whom the order is directed. The person remedying the condition under a contract made with the City shall be authorized to enter the property for that purpose.
- 28.17.06 LIEN AGAINST PROPERTY: If the cost of remedying a condition is not paid within thirty (30) days after receipt of a statement from the City, such cost shall be levied against the property upon which said hazard exists or existed. Levying of such cost shall be certified by the Director to the City Treasurer and shall become a lien upon such property, and shall be included in the next tax bill rendered to the owner or owners unless paid before, and shall be collected in the same manner as other taxes against such property.

figure # 1



Tree Protection Area



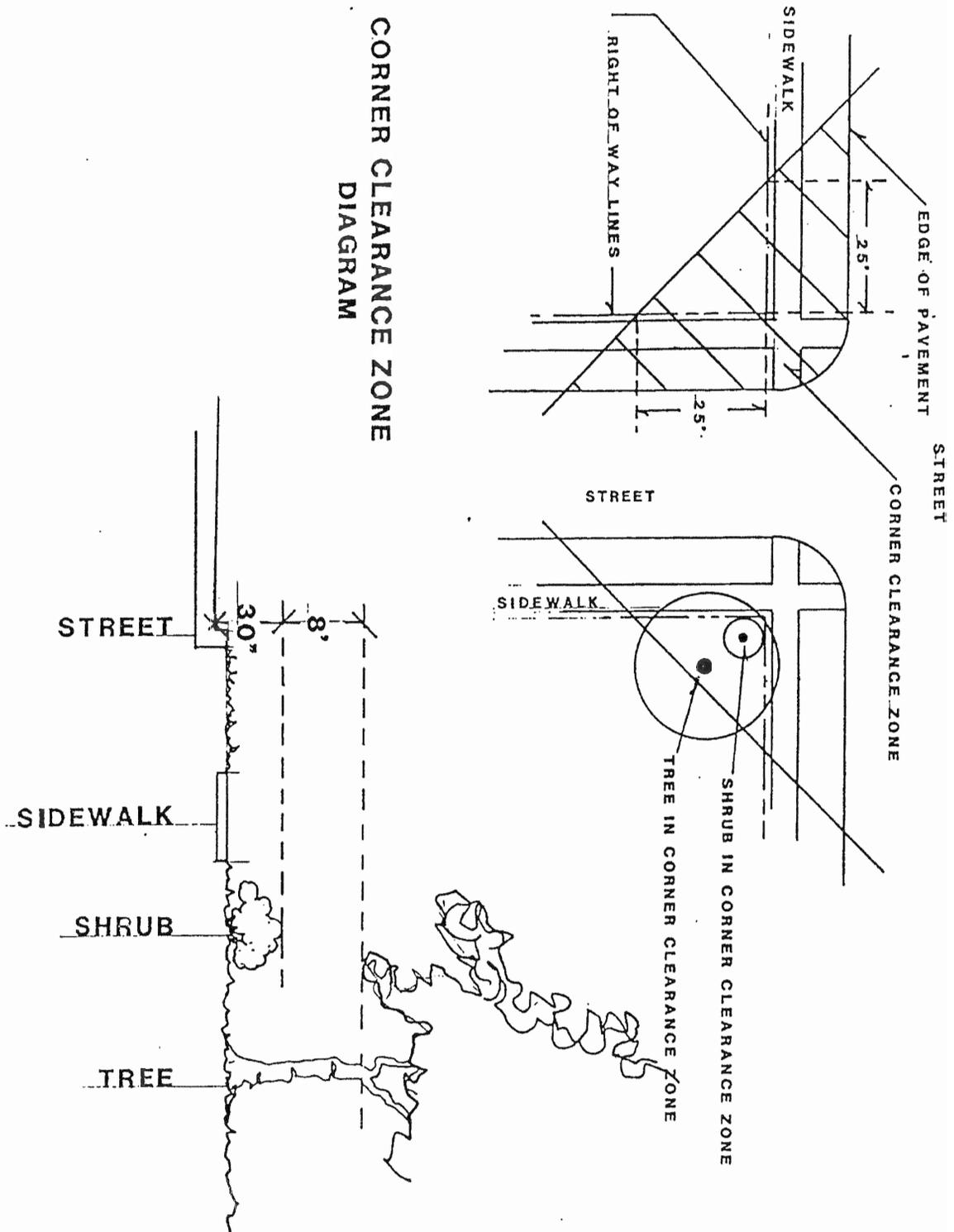
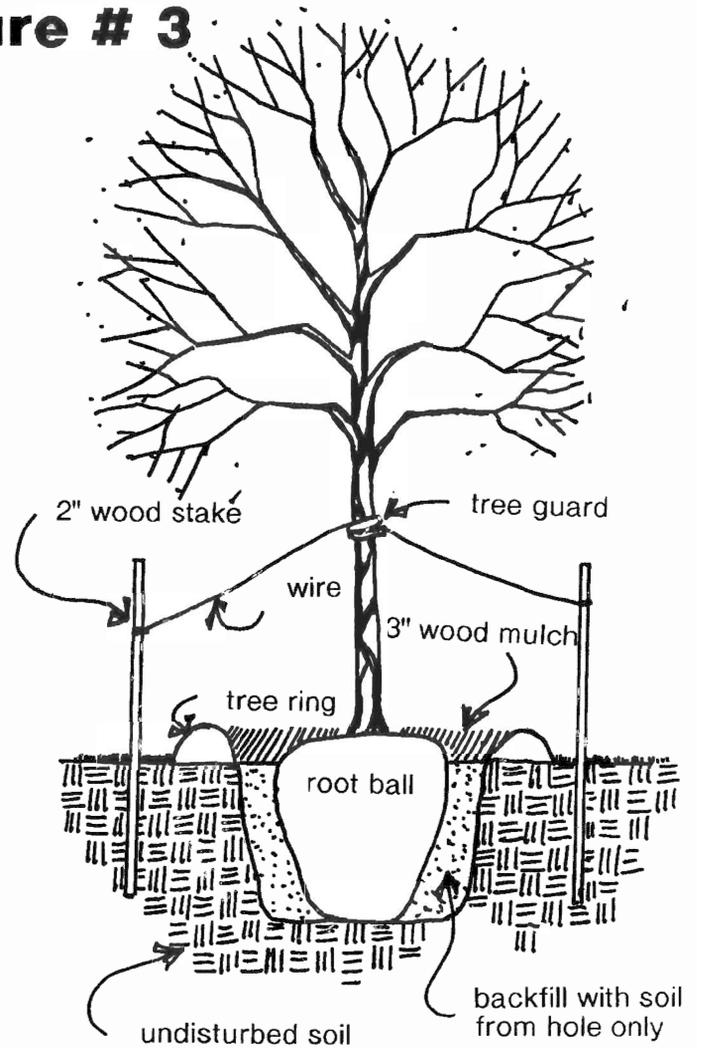
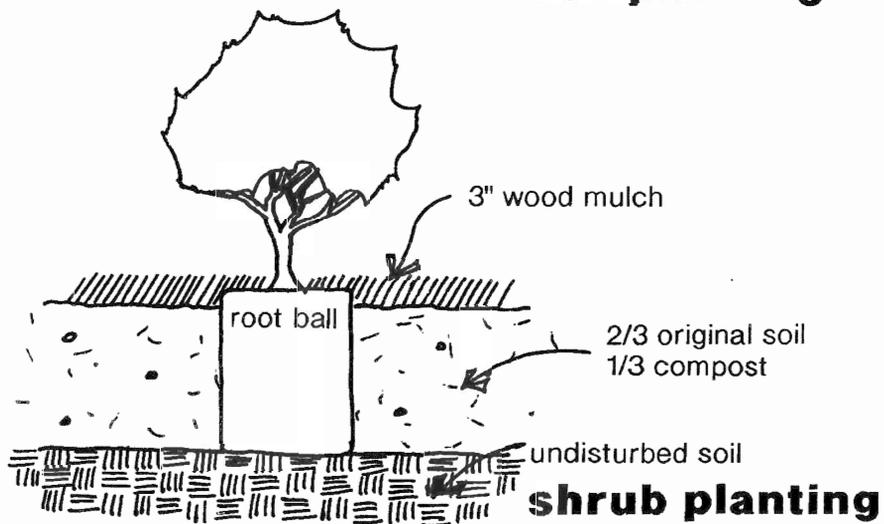


figure # 2

figure # 3

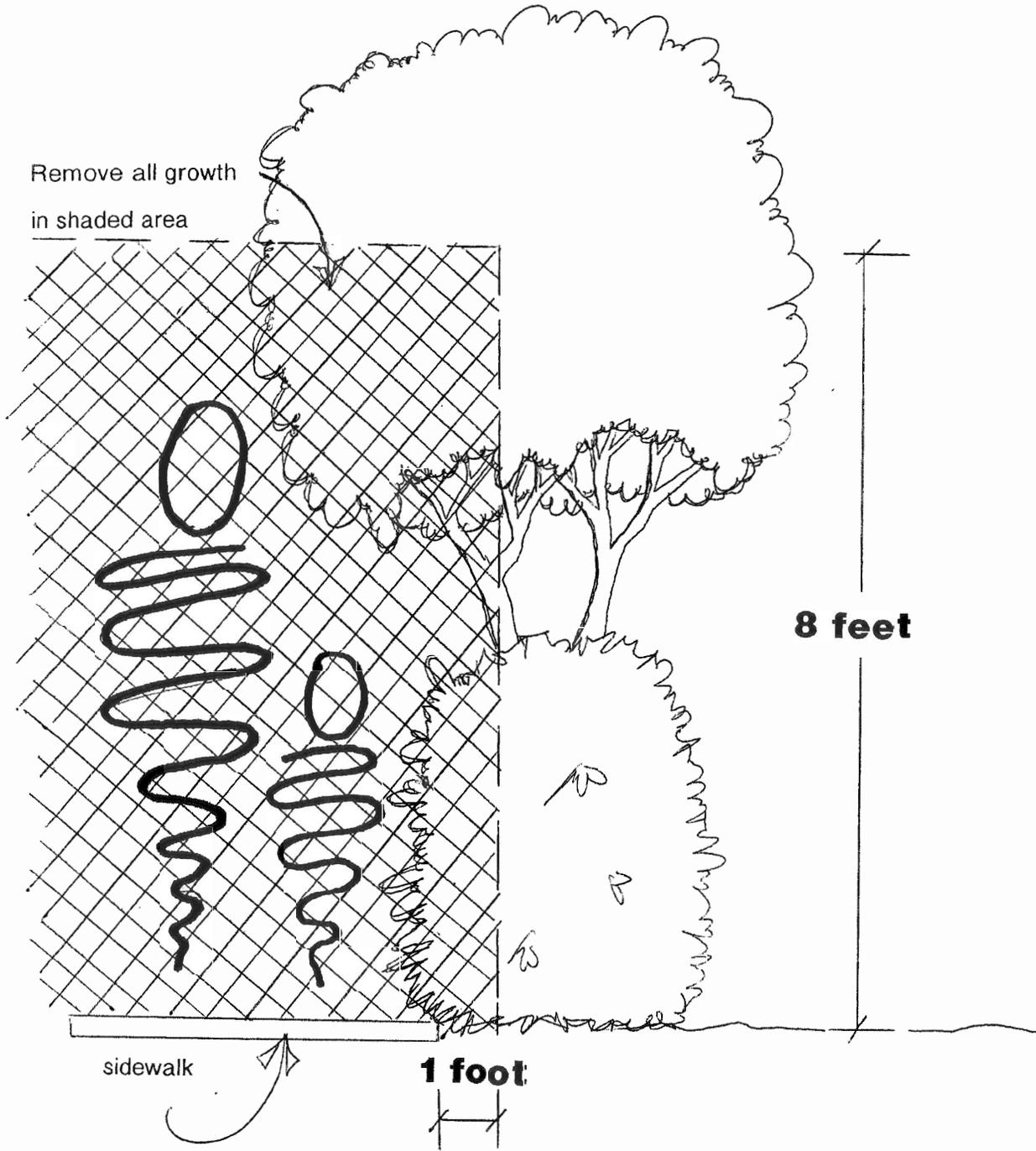


tree planting



shrub planting

figure # 4



Area to be cleared.

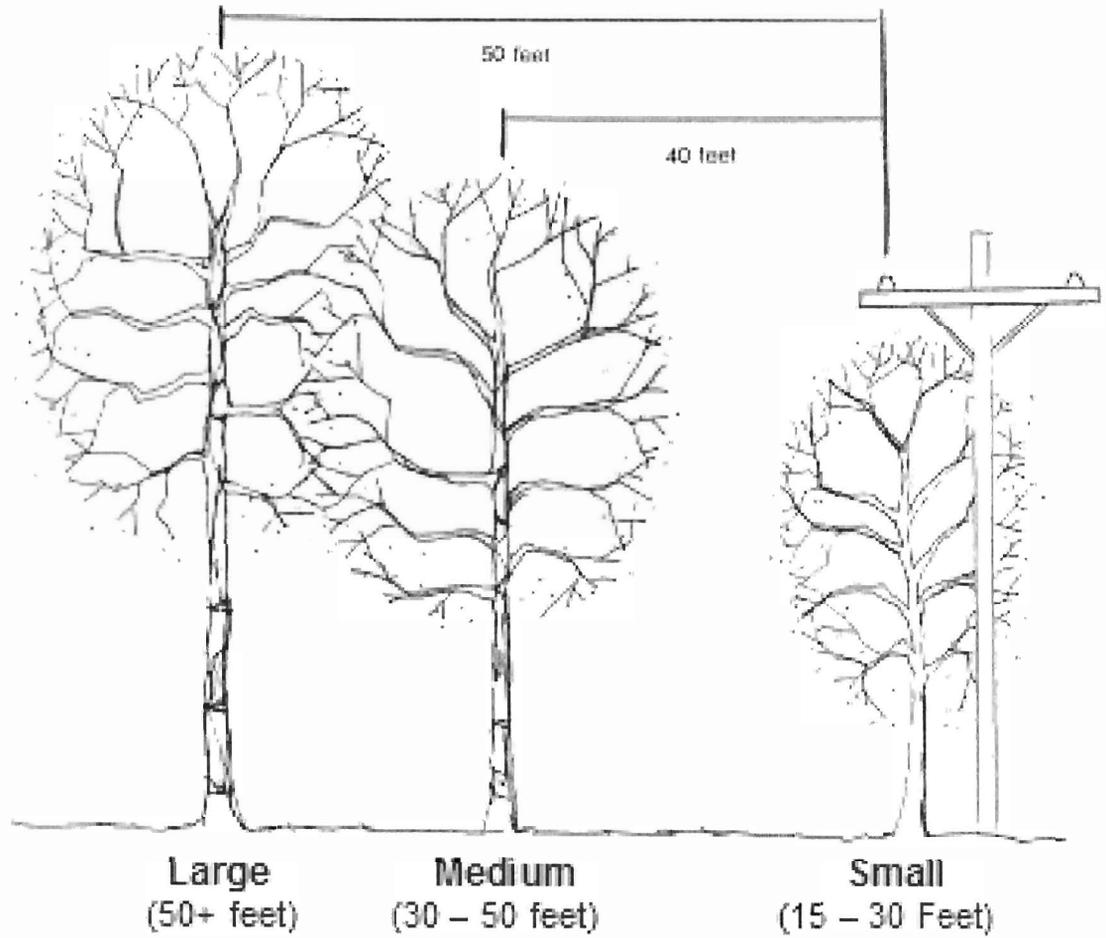
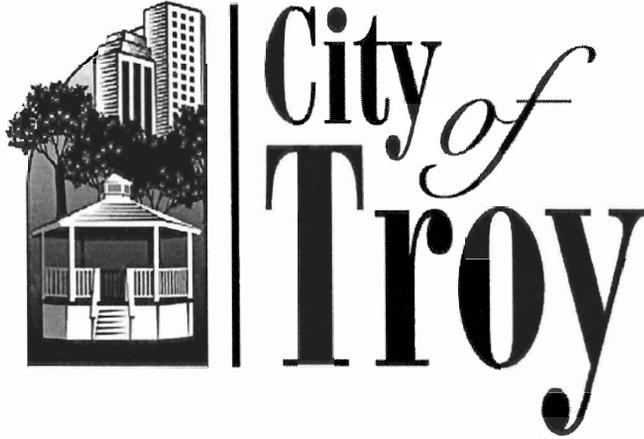


figure # 5



Landscape Design and Tree Preservation Standards

Adopted 09/15/75
Revised 01/13/77
Revised 11/03/86
Revised 03/16/87
Revised 02/12/96
Revised 04-25-06

Each generation takes the earth as trustees. We ought to bequeath to posterity as many forests and orchards as we have exhausted and consumed.

--J. Sterling Morton

Changes as of 4-25-06

Reviewing Agency:

**City of Troy
Parks and Recreation Department**

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Tree Preservation / Landscape Submittal / Approval Process Outline



Preliminary Site Plan Approval

1. Developer submits three (3) copies of **Preliminary** Tree Preservation plan (PTPP)(LD6.00.00, LD9.00.00) and Preliminary Landscape plans(LD6.00.00), to Planning Department with Site Plan Review or Special Use Application or to Parks and Recreation (P&R) or submit written request for for variance (LD3.00.00) or Waiver of Tree Preservation Standards (LD5.00.00).
2. P&R reviews **PTPP** or request for waiver and validates the survey.
3. P&R comments, if any, will be forwarded to Planning & Building Departments.
4. Developer resubmits three (3) copies of revised **PTPP** plan based on P&R comments. If no comments go to #5.
5. P&R approves PTPP and signs off on preliminary sign off sheet which will be forwarded to Planning and/or Building Departments.
6. Preliminary Plans sent to Planning Commission for approval

Final Tree Preservation / Landscape Plan Approval

7. Developer submits three (3) copies of the **Final** Tree Preservation / Landscape Plan (FTPLP)(LD7.00.00, LD10.00.00), Construction Drawings (LD11.00.00), planting specifications (LD12.00.00) and line item cost estimates (commercial only) (LD13.00.00) to P&R.
8. P&R comments, if any, will be forwarded to Planning and Building Departments.
9. Developer resubmits three (3) copies of revised FTPLP. If no comments go to #9.
10. For commercial properties, P&R sets and collects Review fees (LD18.00.00) and Landscape Deposits (LD19.00.00). For sub-divisions, required landscape deposits are collected by the Engineering and/or Planning Department.
11. P&R signs off on Final project sheet.

Work Begins

12. P&R advised twenty-four (24) hours prior to tree clearing operation (LD20.02.00).
13. P&R monitors tree removal
14. P&R advised twenty-four (24) hours prior to landscaping operations (LD22.00.00)
15. P&R monitors installation of landscape.

Landscape Inspections called

16. Commercial Properties

- a. Developer calls for First Implementation Inspection (FII)(LD26.00.00).
- b. P&R comments based on FII forwarded to Building Department. If no comments FII shall be considered the Final Implementation Inspection.
- c. Developer calls for Final Implementation Inspection (LD27.00.00)
- d. P&R forwards comments to Building Department, if necessary, based on inspection.
- e. P&R approves implementation and releases Implementation Deposit, collects Maintenance Deposit (LD19.00.02) and advises Building Department that P&R approves issuance of Certificate of Occupancy.
- f. Minimum of twelve (12) months, maximum of thirty-six (36) months later, Developer calls for Maintenance Inspection (LD28.00.00). **Deposit is forfeited after 36 months.**
- g. P&R forwards comments based on Maintenance Inspection to Developer.
- h. Developer calls for re-inspections.
- i. If P&R approves Landscape, Maintenance Deposit is refunded.

17. Subdivisions

- a. Developer calls for FII (LD26.00.00).
- b. P&R comments based on FII forwarded to Developer. If no comments FII shall be considered the Final Implementation Inspection.
- c. After implementation of City comments, Developer calls for Final Implementation Inspection (LD27.00.00)
- d. P&R forwards comments to Developer, if necessary, based on inspection.
- e. P&R approves implementation and authorizes release of 90% appropriate landscape deposits. Note, subdivision guaranteed see LD34.00.00j



Landscape Design and Tree Preservation Standards



LD1.00.00 Introduction - It is the intent of the City Code Chapter 28, and Chapter 39, Section 12.60.01; 11.50.05; 12.60.02; 13.60.00; 15.60.00; 16.60.00; 17.60.00; 39.30.00; 10.30.03 (C); 18.30.03 (B); 10.30.01 (E); 22.30.01 (B); 24.30.06 (B) and Chapter 41, Sections (E) and (F) to obtain an environment which is responsive to human needs, socially positive, economically viable and environmentally satisfying. Additionally these standards promote reasonable preservation and replenishment of landscaping in developments, commercial properties and municipal grounds by providing guidelines for protection of plants during construction, development and redevelopment.

The reviewing agency for these standards is the City of Troy Parks and Recreation Department (248-524-3484).

These Standards apply to any person or persons developing property where Site Plan approval, Special use Approval is required. These standards shall not apply to platted lots when proposed for development as originally platted or to land parcels equal to or smaller than one half (1/2) acre in size used for single family residence.

LD2.00.00 Circumstances for Variations - These Standards are not intended to be arbitrary or inhibiting to creative solutions. Project conditions may justify modifications of these standards when conditions arise where full compliance is impossible or under circumstances where achievement of the City's objectives can be better obtained through modified requirements. Therefore, in specific cases, variation from the requirements may be permitted by the Director of Parks and Recreation when this variation more fully achieves the objective contained herein and when one or more of the following conditions justify the variance:

LD2.01.00 Topography, soil, or other site conditions are such that full compliance is impossible.

LD2.02.00 Improved environmental quality, and/or utility would result from the variance.

LD2.03.00 Alternate methods, materials or equipment may be used when their use would more closely fulfill the intended objectives of these standards.

LD2.04.00 Lack of existing native vegetation within the limits of the property.

LD3.00.00 Request for Variance

A request for variance must be submitted to the Director of Parks and Recreation in writing at the beginning of the review procedure, describe completely the rationale for the variance request.

LD3.01.00 Special Conditions - Because of various conditions in a specific project, the Director of Parks and Recreation may require compliance with standards other

than those contained herein, in order to obtain those characteristics of viability, utility, service, public safety, and low maintenance expense, while satisfying its objectives and to ensure continued market acceptance of the project.

LD4.00.00 Federal and State Standards -It should be noted that where Federal and/or State Standards pertain, the higher standard shall govern. An example of a possible higher standard would be the Federal Government's Endangered Species Act.

LD5.00.00 Request for Waiver of Tree Preservation Standards - If there are no trees on the site, the Developer may request relief from conforming to the tree preservation portion of these standards by requesting a waiver. Written requests should be directed to the Parks and Recreation Department. City staff will evaluate the waiver request and the Developer will be advised of the findings.

LD6.00.00 Preliminary Tree Preservation / Landscape Plan – General Requirements. The Preliminary Tree preservation and Preliminary Landscape plans shall be submitted as separate documents and shall conform to this format. Three (3) copies shall be provided to the Department of Parks and Recreation, at the time of each submittal.

LD6.01.00 Title block shall include:

- a. Project name, address (if currently assigned) and Sid well numbers
- b. Project location map with a scale of 1" = 200'
- c. Name of the Developer, address, phone and fax number
- d. Name or Project Engineering Firm, address, phone and fax number
- e. Name, address, phone and fax number of Landscape Architect, Designer and/or Tree Appraiser
- f. Zoning Classification of the project

LD6.02.00 Information to be included on all other sheets

- a. Number
- b. Scale
- c. North Arrow (except on detail sheet)
- d. Title
- e. Legend
- f. Property Lines
- g. All structures existing on the site (Tree Preservation plan only)
- h. Proposed and existing easements, utilities, rights-of-ways and building envelopes.
- i. Adjacent land use
- j. Label existing topographic contours on preliminary plans
- k. Attach relevant sections of Consent Judgment if applicable.
- l. See LD9.00.00 for additional tree preservation information
- m. Preliminary Landscape plan shall include all items required of the Final Landscape Plan (see LD 7.00.00, LD10.00.00)

LD6.02.01 Landscape plans are a required element for Preliminary Site Plan Approval, including Tentative Preliminary Plat approval and Preliminary Site Condominium approval. Landscape Plans shall be reviewed by and approved

by the Parks and Recreation Department prior to being considered by the Planning Commission.

LD7.00.00 Final Tree Preservation / Landscape Plan - General Requirement The Final Tree Preservation and Final Landscape plans shall be submitted as one combined document and shall conform to this format. Three (3) copies shall be provided to the Department of Parks and Recreation, at the time of each submittal.

LD7.01.00 Title block shall include:

- a. Project name, address (if currently assigned) and Sid well numbers
- b. Project location map with a scale of 1" = 200'
- c. Name of the Developer, address phone and fax number
- d. Name or Project Engineering Firm, Landscape Architect/Designer, addresses, phone and fax numbers.
- e. Zoning classification of the project

LD7.02.00 Information to be included on all other sheets

- a. Number
- b. Scale - commercial/individual lots min. 1" = 30', max. 1" = 5' Subdivisions min. 1" = 100'
- c. North arrow (except on detail sheet)
- d. Title
- e. Legend
- f. Property lines
- g. Structures to remain or to be built on the site
- h. Proposed and existing easements, utilities, rights-of-ways and building envelopes.
- i. Adjacent land use
- j. Label existing topographic contours on preliminary plans
- k. Label existing and proposed topographic contour lines on final plans.
- l. Location and number code of preserved trees (see also 8.02.04)
- m. Location of reforested trees – must be called out.
- n. Plant list indicating quantity, botanical name, size, condition (bare root, container/size, B&B, etc.),
- o. Planting specifications
- p. Attach relevant sections of Consent Judgment if applicable.

LD8.00.00 Tree Preservation Options - Developer shall use one of the following options or a combination thereof:

LD8.01.00 Preservation of 30% of **total site DBH inches**. (see LD8.01.01)

LD8.01.01 **Total site DBH inches** shall be the total number of DBH (diameter at breast height) inches existing on the site for all trees four (4) inches DBH and up.

LD8.02.00 Replacement of 30% of total site DBH (see LD8.04.00) with new or harvested (LD8.03.02) plantings (A.K.A. *Reforestation Plantings*) at a rate of one (1) DBH inch = one and one half (1 ½") caliper inches. (see LD 8.05.00)

LD8.02.01 For all *reforestation planting* – no one genus of tree shall represent more that 20% of the total number of trees found on the site after final acceptance of the project by the City.

LD8.03.00 Should the site be unable to accommodate all or part of the required *Reforestation Plantings*, upon approval by the City, the Developer may pay into the City's Tree Fund at a rate of one (1) DBH inch = two (2) caliper inches, multiplied by the Tree Reforestation Dollar Value (TRDV) (see LD8.03.01) as set annually by the City.

a. Example - 1000 Total Site DBH inches X 2 X TRDV = amount to be paid into City Tree Fund.

LD8.03.01 Tree Reforestation Dollar Value (TRDV) = \$114.00

LD8.03.02 Harvesting trees for *Reforestation Plantings* – should the Developer choose, trees existing on this or other sites may be relocated in or into the project. Trees shall be:

a. A minimum of 2.5 caliper inches

b. Either balled/burlapped or moved by tree spade

c. In good to excellent condition after installation

d. Unless previously approved by City, only trees on the City's Recommend Deciduous Trees for Troy list will be approved for harvesting and relocation.

e. Guaranteed for one full year after final acceptance (closing) of the development/project by the City. Warranty replacement trees shall be nursery grown and guaranteed for one full year from date of installation. Developer is responsible for requesting all inspections.

f. Covered by a deposit based on the number of caliper inches harvested x TRDV (see LD8.03.01). Funds on healthy harvested trees (as determined by City) to be released at the end of the guarantee period. Remaining funds to be released at the end of the replacement guarantee period for all healthy replacement trees. Developer is responsible for requesting all inspections

g. Replaced if necessary by same number of caliper inches (minimum 2.5 ") but not necessarily with the same number of trees.

LD8.03.03 Developer shall be responsible for the removal of any preserved trees or *Reforestation Plantings*, harvested or nursery grown that die during guarantee period.

LD8.03.04 Developer shall also be responsible for any site damage cause by the removal and/or replacement of trees that died during the guarantee period. This restoration shall include but not be limited to sod, other trees, irrigation systems, underground utilities, fences, drives, walks, patios, pools, landscaping installed after the tree was planted, buildings, etc.

LD8.04.00 Trees Preserved - If the Developer chooses to preserve existing trees, tree selection shall be based on the following:

LD8.04.01 Trees to be considered preserved shall be within the size range of four (4) inches DBH and up.

LD8.04.02 Preserved trees shall not be on the City's prohibited species list. Trees on the prohibited species list can be maintained but will not be considered preserved trees.

LD8.04.03 Any tree that is endangered or threatened, or is a species of special concern as listed on the Federal Inventory List or Michigan Natural Features Inventory List (MNFI), which is maintained by the Michigan Natural Heritage Program and/or the Michigan Land Conservancy shall be preserved.

- LD8.04.04 Any tree of a unique nature, size, or type that by its presence enhances the quality of the overall landscape design. These trees shall be called out on the Preliminary Tree Preservation Plan and Final Tree Preservation / Landscape Plan.
- LD8.04.05 Trees Preserved shall be in good condition (as deemed by the Director) for one full year after the final acceptance (closing) of the project by the City.
- LD8.04.06 At the City's discretion, any tree can be removed from the proposed list of preserved trees.
- LD8.05.00 Reforestation Plantings**
Reforestation Plants shall conform to the following:
- LD8.05.01 Size -
- a. Deciduous shade - minimum of 2 ½" caliper
 - b. Deciduous flowering – minimum 1 ½" caliper
 - c. Coniferous – minimum of 8 feet tall
- LD8.05.02 Deciduous tree varieties shall be selected from the City's Recommended Deciduous Trees for Troy list. Proposed tree varieties not found on the City's list must be approved by the City
- LD8.05.03 Front, back and side yards are the primary planting locations.
- LD8.05.04 If the Developer proves to the City's satisfaction that the required number of trees cannot be located in these areas, the City reserves the option of assigning additional planting sites within the project boundaries.
- LD8.05.05 Reforestation trees shall be a minimum of thirty (30) feet away from the right-of-way.
- LD8.05.06 Reforestation trees shall not be planted in easements.
- LD8.05.07 In areas with above ground utility lines, trees with a matured height of more than twenty (20) feet shall not be planted within fifteen (15) feet of the utility poles. (see City Ordinance 28.15.06)
- LD8.05.08 Reforestation trees shall not be incorporated into any non-access green belts, detention ponds, street planting, medians, cul-de-sac planting or any other landscaping required by the Developmental Standards without City approval. If approved the trees will be used to augment not replace required landscaping.
- LD8.05.09 Reforestation trees shall be in good condition (as deemed by the City) for one full year after the final acceptance (closing) of the project by the City.

LD9.00.00 Preliminary Tree Preservation Plans – Specific Requirements

Preliminary Tree Preservation plans shall be submitted to the Director of Parks and Recreation when an application is submitted to the Planning, Building Department, and /or City Clerk's office for Preliminary Site plan review for a building project or when the Preliminary Plan Review, Special Use Approval Request, or Tentative Preliminary Plat Approval for a project is submitted for review.

LD9.01.00 Plan shall include:

- a. All information listed in LD6.00.00
- b. Location of all trees four (4) inches DBH and larger within the projects property lines and all trees on adjoining properties that have drip lines extending onto the site, shall be located on Preliminary Tree Preservation plan. Each tree shall be number coded.
- c. Table of trees shall be created indicating tree number code, DBH,

- species (maple, elm, spruce, etc.) and condition (good, fair, poor)
- d. Total site DBH for all trees four (4) inch and greater shall be included with above listed table.
- e. Copies of relevant sections of Consent Judgment if applicable.

LD10.00.00 Final Tree Preservation / Landscape Plan Specific Requirements

It is the intent of the Final Tree Preservation / Landscape plan to indicate location of preserved and/or reforested trees and show their relationship to the projects overall landscaping. Additionally, this plan will delineate all required and/or proposed landscaping. Final Tree Preservation / Landscape Plan shall be submitted as one combined document. The Final Landscape Plan shall be consistent with the Preliminary Landscape Plan used to grant Preliminary Site Plan approval by the Planning Commission.

LD10.01.00 Final Tree Preservation/Landscape plan shall include the following:

- a. Base sheet information, as indicated in LD7.00.00.
- b. Location of trees to be preserved as per these standards and/or locations of reforestation plantings.
- c. Plant list. The plant list can be printed on the plan or can be typed and attached to each of three (3) sets of plans submitted for review. Plant list shall include:
 - 1. Botanical name
 - 2. Common name
 - 3. Plant size
 - 4. Number of each plant variety used
 - 5. Condition
 - a. Balled and burlapped
 - b. Bare root
 - c. Potted
 - d. Container grown

LD10.01.01 All plants shall be identified with the proper botanical name. This requirement does not preclude the use of a key system method of identifying plant materials on the plan.

LD10.01.02 Planting details shall be provided for each plant group to be installed on the site (shade/flowering trees, shrubs, evergreens, perennials, ground covers, annuals, etc.)

LD10.01.03 The City reserves the right to reject any proposed plant materials or proposed planting locations.

LD10.01.04 A break down of the Tree Preservation option(s) used and shall also indicate:

- a. Option(s) used
- b. Total Site DBH inches (see LD8.01.01)
- c. Number and size of trees preserved, or replanted, or amount to be paid into City Tree Fund
- d. Show calculations for all options used
- e. Construction drawings (LD11.00.00), landscape planting specifications (LD12.00.00) and cost estimates (LD13.00.00) shall be submitted at the same time as Final Tree Preservation / Landscape Plan.

LD11.00.00 Construction Drawings - All construction (engineering) drawings and specifications shall conform to the City of Troy Development Design Standards and the Landscape Design and Tree Preservation Standards.

LD12.00.00 Landscape Planting Specifications - The Developer is required to provide a copy of the landscape planting specifications that will be employed during the implementation of the project. If these specifications are found to be insufficient, the proper changes are required to be made before the landscape plans will be approved.

LD13.00.00 Cost Estimate - Landscaping (Non-residential only) – An itemized estimate covering the costs of all landscaping (hardscape and softscape) scheduled for the project shall be submitted with all landscape plans. The cost estimate shall be in the form of a line item cost break out. A single total cost for the project is not acceptable. Irrigation shall not be included in the cost estimates.

LD14.00.00 Submittal Requirements - It is the intent of the Landscape Design Standards to inform the Developer of submittal requirements, review procedures, fees and inspections and guarantees. It should be noted that strict adherence to the procedures outlined herein will ensure expeditious processing of plans and thereby minimize the need for project modifications.

LD15.00.00 The Reviewing Body - The Tree Preservation Plans, Landscape Plans, cost estimates, construction drawings, details, and specifications will be reviewed by the Director of Parks and Recreation or her/his designated agent.

LD15.01.00 All submitted drawings, and supporting documentation shall be reviewed for:

- a. Conformity to all current City Ordinances and Standards.
 - b. Aesthetic quality.
 - c. Appropriate selection and use of all plants.
 - d. Due to the unique natural of each site, no one set of ordinances or standards can cover all contingencies. The City reserves the right to critic any aspect of the proposed design. The Designer/Developer shall resolve any issues brought to their attention by the City.
-

LD16.00.00 Submission for Review

It is required that all landscape data be submitted, reviewed and approved before any Building permit / Final Site Approval can be issued. No tree regardless of size, shall be removed until the Final Site **Plan** Approval is issued (see City Ordinance 28.06.05).

LD16.01.00 Three (3) copies of required plans, planting specifications (statements that outline the procedures that will be used to install all plant materials and other landscape elements) and itemized cost estimates will be submitted to the Parks and Recreation Department.

LD16.02.00 On-site changes of an approved landscape plan may be made using the following:

- a. The City of Troy must approve all changes.

- b. Prior to any deviation from the accepted plan, the City of Troy must be contacted and asked for an evaluation of the proposed change.
- c. In projects where deviation from the accepted landscape plan has been approved, the Developer shall forward as-built drawings to the City of Troy prior to the implementation inspection.

LD16.02.01 Any changes made to the required plans, specifications, details, and/or cost estimates after the issuance of Final Site Approval could delay the issuance of the Final Certification of Occupancy, and release of the Implementation and/or Maintenance Deposits.

LD17.00.00 Changes in a Landscape Plan Resulting from Review Process - Any changes required by the reviewing body must be included in three (3) complete sets of revised plans to be submitted to Parks and Recreation, along with the revised specifications and cost estimates.

LD18.00.00 Tree Preservation / Landscape Plan Review Fee

The Tree Preservation / Landscape Plan Review Fee is based on the total (gross) acreage of the project. Final Site approval will not be issued until this fee is paid. The non-refundable fee will be charged at the rate of:

- a. Less than five acres - \$400.00
- b. Five acres or more - \$50.00 per acre with a minimum charge of \$400.00

LD18.01.00 Tree Preservation / Landscape Plan Penalty Review fee:

- a. Less than five acre - \$800.00
- b. Five acres or more - \$100.00 per acre with a minimum charge of \$800.00

LD19.00.00 Landscape Deposits

Landscape Deposits listed in this section are for all sites other than sub-division developments. Final Site approval will not be issued until this deposit is made.

LD19.01.00 Implementation Deposit – After the Final Tree Preservation / Landscape Plans, planting specifications and cost estimates have been approved, and prior to the issuance of Final Site Approval, the Developer shall post with the City of Troy an Irrevocable Bank Letter of Credit and/or cash deposit that will serve as the Implementation Deposit.

LD19.01.01 The amount of Implementation Deposit shall be determined by the Parks and Recreation Department based on the following percentages:

- a. Forty-five (45) percent of the total project's landscaping costs of \$3999.99 or less
- b. Twenty-five (25) percent of the total project's landscaping cost of \$4000.00 or more.

LD19.01.02 **No inspections shall be made if Bank Letter of Credit has expired.**

LD19.02.00 Maintenance Deposit – Once the Final Tree Preservation / Landscape plan has been fully implemented and the implementation has been approved by the City of Troy (LD27.00.00), the City of Troy shall release the Landscape Deposit less the *Maintenance Deposit*. Twenty (20) percent of the total estimate or \$1000.00 (whichever is greater) shall be posted as a Maintenance Deposit with the Parks and Recreation Department prior to the issuance of the final Certification of Occupancy. **Bank Letter of Credit will not be accepted for the**

Maintenance Deposit. The Property Owner/Developer is responsible for requesting all inspections

- LD19.02.01 Final inspection of the landscape for release of Maintenance Deposit may be called for one year after receiving implementation approval. The Property Owner/Developer is responsible for requesting all inspections
- LD19.02.02 The intent of this requirement is to ensure that all dead, dying, diseased and/or weakened plant materials found during the Final Maintenance Inspection shall be replaced with viable plant materials during the next acceptable planting season. Additionally, it ensures that the site has received proper landscape maintenance.
- LD19.02.03 The Irrevocable Bank Letter of Credit and/or cash deposit will be held for a minimum of one year. The Developer/Property Owner is responsible for requesting inspections. The Developer/Property Owner will be notified by the City of any replacements / repairs / corrections required. The replacements / repairs / corrections to the landscape shall be made within thirty days of notice unless otherwise approved by City.
- LD19.02.04 When the replacements / repairs / corrections have been made to the satisfaction of the City, the Bank Letter of Credit and/or cash deposit will be released, and a final project approval will be forwarded to the Building Department.
- LD19.02.05 Failure on the part of the Property Owner to comply with these standards may result in the forfeiture of either or both of the Irrevocable Letters of Credit and/or cash.
- LD19.02.06 Should it be found that the Bank Letter of Credit has expired before the City has performed the Final Implementation Inspection and approved the landscape, the amount of the appropriate deposit and all administrative costs, may (at the City's discretion) be levied against the property.
- a. Levying of such cost shall be certified by the Director of Parks and Recreation to the City of Troy Treasurer and shall become a lien upon such property, and shall be included in the next tax bill rendered to the Property Owner or Property Owners unless paid before and shall be collected in the same manner as other taxes against such property.
 - b. Of the monies collected in this manner only the original amount of the deposit is refundable and only after the maintenance inspection has been completed and the landscape receives final approval.
- LD19.03.00 Depositor shall forfeit the Maintenance Deposit if the Maintenance Inspection is not called for within three years of Final Implementation Inspection, or unless otherwise approved by the Director of Parks and Recreation.

LD20.00.00 Tree removals prior to Final Site Approval –

No tree, regardless of size, shall be removed without Final Plan Site Approval.

LD20.01.00 Undergrowth may be removed at any time. However, if in the process of removing the undergrowth, soil is disturbed, all work shall cease until the City's Environmental Specialist clears the site for the continuation of work.

LD20.02.00 The Parks and Recreation Department shall be notified twenty-four hours prior to the beginning of any type of clearing operation.

LD21.00.00 Violation of Tree Preservation plan

Performing any tree or *plant* removals in violation of the City Ordinance Chapter 28 (Tree and Plant Ordinance) and/or the “Tree Preservation and Landscape Design Standards” shall result in the following:

- a. Issue of “Stop Work Order”
- b. Cancellation of all currently held Tree Preservation and Landscape approvals.
- c. See City ordinance 28.16.02

LD22.00.00 Landscape Installation

Prior to and during landscape installation:

LD22.01.00 No landscape work shall take place without final site approval.

LD22.02.00 The Parks and Recreation Department shall be notified of the proposed starting date twenty-four (24) hours before work on the project begins.

LD22.03.00 Landscaping not conforming to approved drawing and specification shall result in the:

- a. Issuance of a “Stop Work Order”
- b. Cancellation of all currently held permits
- c. Additional fees as per LD18.01.00
- d. All changes in approved Final Tree Preservation / Landscape plans shall be approved in writing prior to implementation of changes.

LD22.04.00 No temporary or final certificate of occupancy will be granted until these Standards are complied with fully.

LD23.00.00 Tree and Plant Protection

Developer is required to:

LD23.01.00 Adhere to the tree and plant protection measures as listed in Chapter 28 of City Code.

LD23.02.00 If encroachment into a tree protection area occurs, resulting in irreparable damage to the trees or the area inside the tree protection area, a “Stop Work Order” will be issued and the Final Tree Preservation/Landscape plan shall be revised to indicate reforestation planting required compensating for tree loss/damage. (see City ordinance 28.16.02) All revised plans will have to be re-approved. (see LD18.01.00)

LD23.03.00 Under no circumstance shall the Developer be relieved of the responsibility of compliance with the provisions of this Standard, City Ordinances and Developmental Standards.

LD23.04.00 Pre-construction Tree Protection

Prior to construction:

- a. All protective measures as outlined in this standard and City Ordinance 28.08.00 shall be in place before any site work will be permitted.
- b. Remove non-preserved trees. Cut rather than push over with dozers to protect roots of preserved trees.
- c. With City approval, the Developer may prune limbs in the way of improvements prior to construction.

LD23.05.00 Construction Tree Protection

During construction operations:

LD23.05.01 Keep all construction activities out of “Tree Protection Area” (City Ordinance 28.02.26). NO storage of any type of materials, equipment, or any other activity will be allowed inside the Tree Protection Area.

LD23.06.00 Post—Construction Tree Protection

After all construction and the establishment of final grade:

- a. Remove all tree protective barriers
- b. Prune any damaged trees
- c. Replace preserved trees that died during construction (see City Ordinance 28.16.02)

LD24.00.00 Inspection Schedule - The intent of the following sections is to inform the Developer of the inspection schedule which will be employed by the City of Troy during the landscape construction period. This section also informs the Developer of what procedures must be employed in order to receive an inspection at the request time, and the scope of each inspection. Developer / Property Owner is responsible for requesting all inspections.

LD25.00.00 Initial Site Inspection - When the Parks and Recreation Department receives any plans, a site inspection may be made to help the reviewer(s) determine if any problems areas can be found that may not be fully delineated on the plans. This will also help the reviewers realize the full impact of the proposed development on the local environment.

LD26.00.00 First Implementation Inspection

After the Final Tree Preservation Landscape plan has been approved, review fee paid, landscape deposit posted, Final Site Approval issued, and the Parks and Recreation Department has been notified of installation schedule, the implementation of the Final Tree Preservation / Landscape plan can begin.

LD26.01.00 During the implementation of landscape the City reserves the right to perform unscheduled inspections of the site, and all landscape materials.

LD26.02.00 Developer shall be advised of any sub-standard plant materials, which shall be removed from the site.

LD26.02.00 Developer shall be advised of any installation concerns. These concerns shall be corrected within the time frame given or a “Stop Work Order” will be issued.

LD26.03.00 Failure to follow this procedure on the part of the Developer will result in a “Stop Work Order”.

LD27.00.00 Final Implementation Inspection

The Developer/Property Owner will request a Final Implementation Inspection by the City of Troy at least five (5) working days prior to the proposed inspection date.

LD27.01.00 When the project has been approved by the City of Troy, the Parks and Recreation Department shall forward to the City of Troy Building Department all approvals and upon receipt of Maintenance Deposit the City will release the Implementation Deposit.

LD27.02.00 In cases where the City has not approved the project, the objections shall be outlined in writing and shall be forwarded to the Developer and Building

Department. This notice will also stipulate the date and/or dates by which the required alterations will be completed.

LD27.03.00 When a project has not been approved at the time of the Final Implementation Inspection, additional inspections will be made as the required alterations have been completed. The Developer /Property Owner will contact the City of Troy at least twenty-four (24) hours prior to the proposed re-inspection date.

LD27.04.00 The deposits will not be returned until the required corrections are complete.

LD28.00.00 Maintenance Inspection (Final)

This inspection will take place a minimum of twelve (12) months and a maximum of thirty-six (36) months after the last Implementation Inspection. The depositor forfeits the Landscape Maintenance Deposit after thirty-six (36) months. Developer/Property Owner is responsible for requesting all inspections.

LD28.01.00 It is the responsibility of the Developer/Property Owner to contact the City of Troy and request all inspections. Requests shall be made at least five (5) working days before inspection date.

LD28.02.00 All materials that do not pass this inspection will be listed in written form and forwarded to the Developer by the City of Troy. This notice will also stipulate the date by which all replacements will be completed.

LD28.03.00 When a project is not approved at the time of the Maintenance Inspection, additional inspections will be made when the required alterations have been completed. The date for this inspection can be established by contacting the City of Troy at least forty-eight (48) hours prior to the proposed inspection date.

LD28.04.00 When the project is not approved by the City of Troy, the Maintenance Deposit shall be released.

LD28.05.00 Failure on the part of the Developer to follow the procedures in this section, will result in the forfeiture of the Irrevocable Bank Letter of Credit and/or cash deposit.

LD29.00.00 Landscape Contractor Qualifications - The intent of this section of the Standards is to inform the Developer of what minimum qualifications a Tree Appraiser and/or Landscape Contractor are to be. Information as to the responsibilities of the Landscape Contractor other than the simple implementation of the landscape plans can be found in this section of these standards.

LD29.01.00 The Landscape Contractor (person and/or firm responsible for the implementation of the approved landscape development plan) shall be licensed by the State of Michigan, Department of Agriculture Plant Industries Division to handle plant materials.

LD29.02.00 The Landscape Contractor will be covered by a public liability property damage insurance policy.

LD29.03.00 The Landscape Contractor shall conform to all Federal and State Labor Laws.

LD30.00.00 Landscape Contractor Responsibilities

The Landscape Contractor shall guarantee that all plants are true to botanical name, and that the quality and size meet the approved specifications.

LD30.01.00 The Landscape Contractor shall fully guarantee that all plants are in a vigorous growing condition during and at the end of the guarantee periods. This

guarantee period shall be minimum of one (1) year from the issuance of Final Implementation Inspection.

LD30.02.00 Replacement plants and/or landscape materials other than plants shall be in accordance with the approved original specifications.

LD30.03.00 The Contractor shall at all times keep the premises and public streets free from any excessive accumulation of soil and waste material or rubbish caused by his employees or work, and at the completion of the work, he shall remove all his waste, excessive material, rubbish and equipment so as to leave the premises neat and clean and ready for the purpose for which it was intended.

LD30.04.00 The Landscape Contractor shall properly protect all existing structures and property on land abutting the project. This is to include, but not be limited to:

- a. Sidewalks
- b. Curbs
- c. Fences
- d. Buildings
- e. Lawns
- f. Trees
- g. Shrubbery
- h. Irrigation systems
- i. Lighting systems
- j. Ornamental structures

LD31.00.00 Tree Appraiser Qualifications –

The intent of this section of the Standards is to inform the Developer of what minimum qualifications a Tree Appraiser are to be.

Information as the responsibilities of the Tree Appraiser other than the simple implementation of the landscape plans can be found in this section.

LD31.01.00 A qualified Tree Appraiser shall have a minimum of two (2) years of college in the areas of Horticulture, Forestry, Urban Forestry, Landscape Architecture or related field or two (2) years experience at a supervisory level in one of these disciplines or related fields. The Parks and Recreation Department will review credentials upon request of the Developer.

LD32.00.00 Tree Appraiser Responsibilities

Shall be able to provide the necessary graphic and written reports as outlined in this standard.

LD32.01.00 The Tree Appraiser shall be held accountable for the accuracy of all graphic and written submittals.

LD33.00.00 Plant Material Requirements - The intent of this section to inform the

Developer of the minimum requirements placed on all plant materials used to implement those landscape requirements as called for by the City Code.

The following information includes the definitions of the seven (7) major plant groups that come under the control of these standards and the specific requirements placed on each plant group.

LD33.01.00 Broadleaf Evergreens - As the name implies, this group of plant materials have broad leaves, rather than needles, and retain their foliage throughout the winter months. This plant group is a woody ornament having both low spreading varieties and shrub forms.

- a. Minimum required size for low spreading varieties of broadleaf evergreens is fifteen (15) to eighteen (18) inches in width.
- b. Minimum required size for shrub form broadleaf evergreens is eighteen (18) to twenty-four (24) inches in height.

LD33.02.00 Coniferous Evergreens - This group of plant materials maintains its foliage throughout the entire year in a green condition. These plants are woody ornamentals and for the most part, have very narrow leaves, often referred to as needles. It should be noted that coniferous evergreens have both spreading and upright varieties.

- a. Minimum required size for spreading coniferous evergreens is fifteen (15) to eighteen (18) inches in width.
- b. Minimum required size for upright coniferous evergreens is five (5) to six (6) feet in height.

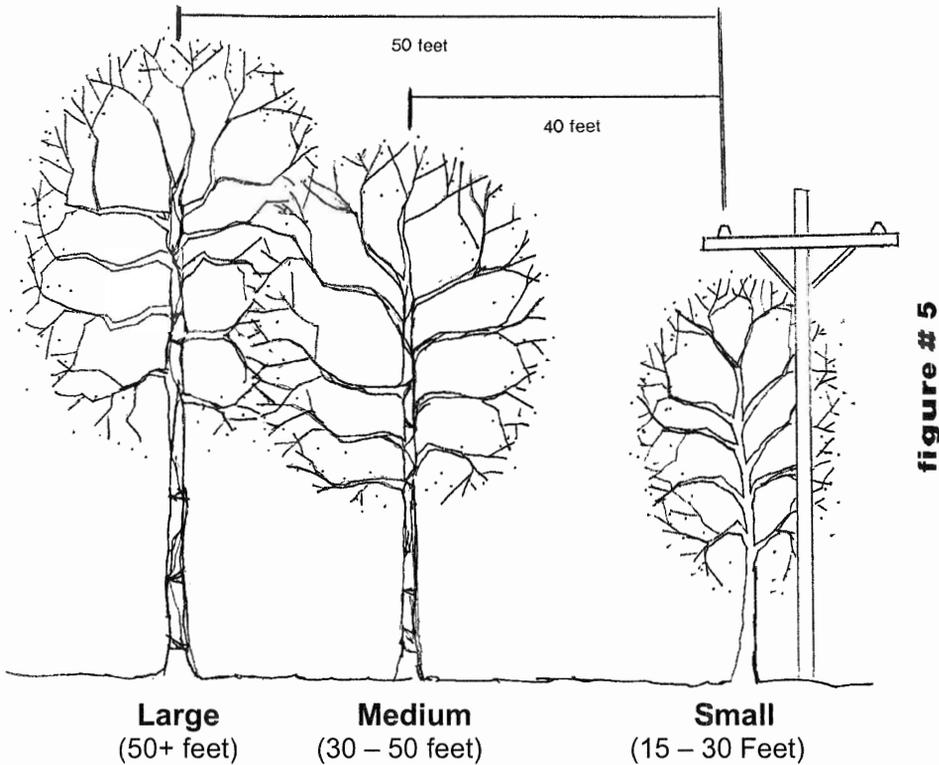
LD33.03.00 Deciduous Shrubs - This group is made up of those woody ornamental plants with several self-supporting stems, which lose their foliage each autumn.

- a. Each plant will have a minimum of at least three (3) stems, at least eighteen (18) to twenty-four (24) inches long.
- b. This requirement does not preclude the possibility of using espaliered or topiary shrubs.

LD33.04.00 Deciduous Shade and Small Flowering Trees - These trees and shrubs are those woody ornamental; plant materials with one or more self-supporting stems or trunks with a usually well-defined branching network located near the distal end of the trunk. The foliage of this plant group is dropped each autumn, and is renewed in the spring of the year.

- a. The minimum heights and caliper requirements for shade trees are as follows:
 1. The minimum caliper - two (2) inches to two and one half (2½) inches.
 2. The minimum height - ten (10) feet.
- b. The minimum height and caliper requirements for small flowering trees are as follow:
 3. Minimum caliper - one and one-half (1½) to one and three-quarters (1¾) inches.
 4. Minimum height – five (5) feet.
- c. It should be noted that all caliper measurements will be taken at least six (6) inches above the graft (on grafted materials) and six (6) inches above root, shoot junction on all non-grafted materials.
- d. All height measurements will be taken from the soil line at the base of the tree to the end of the central leader.

- e. Minimum Soil Surface Areas – When planting trees in areas totally surrounded by impermeable surfacing (i.e. Concrete, pavers, asphalt buildings, etc.), there shall be a minimum of thirty-six (36) square feet of exposed soil surface for each tree.
- f. All tree spacing in the landscape and setbacks from overhead utility lines shall conform to City Ordinance 28.15.06 & Figure #5 (see below) unless otherwise required (see Developmental Standards) or approved by the City.



LD33.05.00 Ground Covers

- a. As a general requirement placed on all ground covers, no rooted cuttings shall be deemed as acceptable plant materials. All ground cover materials shall be at least one (1) year bedded stock.
- b. The following requirements shall govern those ground covers that spread over the desired area by the use of above ground runners:
 - 1. The minimum number of runners required per plant - three (3).
 - 2. The minimum required length of each runner - six (6) inches.
- c. Maximum spacing between plants at installation shall not exceed:
 - 1. 4" root ball and smaller - six (6) inches on center.
 - 2. 6" root ball – twelve (12) inches on center
 - 3. one gallon – twenty four (24) inches on center
- d. The following requirements shall govern those ground covers that spread over the desired area by the use of under ground runners:
 - 1. All plants shall be potted either four (4) or six (6) inch pots.
 - 2. All plants shall be well balanced and have a well-established root system.

LD33.06.00 Perennials – This group is made up of those herbaceous ornamental plants that generally dies down to the ground each fall, but re-grow from the root system for a minimum of three years.

- a. The following requirements shall govern perennial plants:
 1. All plants shall be potted in minimum six (6) inch pots
 2. All plants shall have a well-established root system.
- b. Spacing - If used in a mass planting the maximum spacing between plants shall not exceed:
 1. Plants with foliage height between one (1) and six (6) inches – twelve (12) inches on center.
 2. Plants with foliage height between seven (7) and twelve (12) inches – eighteen (18) inches on center.
 3. Plants with foliage height between thirteen (13) and twenty-four (24) inches – thirty (30) inches on center.
 4. Plants with foliage height between twenty-five (25) and thirty-six (36) inches – thirty-six (36) inches on center.
 5. Plants with foliage height greater than thirty-six (36) inches – forty-eight (48) inches on center

LD33.07.00 Turf Grass - Those herbaceous plant materials, which have a low spreading growth habit covering the soil surface often used in lieu of an ornamental ground cover, or an organic/inorganic material such as woodchips or stone.

- a. City's Development Standards shall govern turf grass installations.

LD34.00.00 Other Requirements Placed on Plant Materials - The following information is a list of all other requirements placed on all plant materials used in the implementation of those landscape projects called for by City Code.

- a. All plant material shall conform in botanical name, dimensions, and quality of the "Horticultural Standards" adopted by the *American Association of Nurserymen*.
- b. All bare root plant material shall have a well-branched root system, characteristic of the species. The root system will meet the minimum standards for bare root nursery stock as set down by the *American Association of Nurserymen*.
- c. Balled and Burlapped plant material shall be balled with original soil, intact with the fibrous roots to insure maximum recovery after transplanting.
- d. Plants shall conform to the above standards when materials are balled and burlapped.
- e. Potted plants shall have sufficient root structures to ensure full recovery and development.
- f. Any plants existing on the site requiring relocation must be dug in accordance with the above stated standards.
- g. Nursery stock shall be vigorous, free from disease, insects, insect eggs, or larvae.

- h. All tree selections shall be made using the City's "Recommended Deciduous Trees" list unless otherwise approved.
- i. Substitution of materials included in an approved plan shall only be made with the consent of the City of Troy. The Property Owner/Developer may request an amendment verbally or in writing. Approval can be given verbally and followed up in writing. The Property Owner/Developer shall provide an as-built drawing indicating the changes prior to the request for the implementation inspection.
- j. All plantings shall be 100% guaranteed for one (1) year after the City releases relevant landscape deposits.

LD35.00.00 Prohibited Plant Materials -

Plants that shall not be planted by the general public and Developers within the *City* include the following plants and all cultivars thereof:

LD35.01.00 Permanent Ban:

- | | |
|--------------------------------|--|
| a. Acer saccharinum | - Silver Maple |
| b. Acer negundo | - Box Elder |
| c. Acer platanoides | - Norway maple |
| d. Ailanthus altissima | - Tree of Heaven |
| e. Catalpa speciosa | - Northern Catalpa |
| f. Fraxinus spp. | - Ash, all forms |
| g. Paulownia tomentosa | - Royal Empress Tree |
| h. Populus spp. | - Poplar / Cottonwood |
| i. Pyrus calleryana 'Bradford' | - Bradford Pear |
| j. Salix spp. | - Willow (excluding shrub forms) |
| k. Ulmus spp. | - Elm (excluding cultivars of
U. parvifolia & U. americana) |

LD35.02.00 Temporary Ban:

As of May 8, 2006 the City will not approve the following plants, and all cultivars thereof, for planting in the City of Troy.

- | | |
|--|---------------|
| a. Acer spp. (excluding Japanese forms) | -Maple |
| b. Betula spp. | -Birch |
| c. Gleditsia triacanthos | -Honeylocust |
| d. Platanus occidentalis | -Sycamore |
| e. Quercus spp. | -Oak |
| f. Robinia pseudoacacia | -Black Locust |
| g. Sorbus acucparia | -Mountain Ash |
| h. Tilia spp. (excluding tomentosa 'Sterling') | -Linden |

LD35.03.00 Temporary bans will be review by the City every five (5) years to determine if plants should be added, removed or remain on the list.

LD36.00.00 Site Preparation Prior to Plant and Irrigation Installation

LD36.01.00 No construction debris larger than one (1) inch in any dimension shall be found in the top twelve (12) inches of soil after completion of rough grading.

LD36.02.00 No construction debris larger than six (6) inches in any dimension shall be found between twelve (12) inches and twenty-four (24) inches below the topsoil.

- LD36.03.00** Rough grades shall be established prior to soil fracturing.
- LD36.04.00** Developer shall submit drawings indicating areas to be fractured. City reserves the right to add or delete areas.
- LD36.05.00** Prior to the introduction of topsoil or soil improvers all designated areas not covered by hard surfaces, buildings, fences, etc. but excluding the tree protection area(s) and retention/detention ponds, shall be mechanically fractured to a minimum depth of eight (8) inches and re-graded to rough grades. Approved fracturing techniques include but shall not be limited to:
- a. Plow
 - b. Hydro jet
 - c. Till
 - d. Drill-n-fill
 - e. Compressed air treatments
 - f. Hollow tine aerification
- LD36.06.00** To reduce the degree of difficulty during soil compaction mediation, the City encourages Developers/Contractors to limit and confine activities that will cause and/or increase soil compaction.
- LD36.07.00** Once the soils have been mechanically fractured, re-compaction of the soils shall be avoided. Should it be found that re-compaction or inadequate fracturing has occurred, the City shall designate those areas that shall be re-fractured.
- LD36.08.00** Should it be determined, by the City, that soil fracturing can not be done in all areas, then:
- a. Each location to receive a tree:
 1. Shall be radiate trenched. Eight (8) trenches shall radiate out from the tree planting hole, and shall measure a minimum of fifteen (15) feet long from center of hole, a minimum of thirty-six (36) inches deep, and a minimum of six (6) inches wide.
 2. 2/3 original soil, 1/3 decomposed organic matter shall be mixed and used as the trenching backfill.
 - b. Each location to receive shrubs/perennials/etc. shall be excavated to a depth of twelve (12) inches and backfilled with screened topsoil. (see LD36.01.00)
- LD36.09.00** All areas to be maintained as turf shall receive a minimum of two (2) inches of screened topsoil after fracturing. (see LD36.01.00)
- LD36.10.00** All finished grades shall be a minimum of one (1) inch and a maximum of two (2) inches below hard surfaces (i.e. concrete, asphalt, etc.) unless otherwise approved by the City.
- LD36.11.00** Finish grading shall not be done when soils are wet.

LD37.00.00 Landscape Designer Qualifications and Responsibilities

Individuals designing landscapes for Site Plan Approval, Special Use Approval, or Subdivisions Plat Approval, prior to doing the submitted designs, shall have one of the following qualifications:

- a. For proposed landscapes with total installed cost of \$2000.00 or less - Michigan Certified Nurseryman or equivalent from another state.

- b. Landscapes with total installed cost over \$2,000.00 to \$350,000.00 - Bachelors in Landscape Architecture, Architecture, Landscape Design, Horticulture, or Agriculture.
- c. Landscapes with total installed cost over \$350,000.00 – Registered Landscape Architect.

LD37.01.00 Responsibilities – Individuals creating landscape designs for commercial Properties and/or subdivisions shall:

- a. Thoroughly acquaint themselves with site conditions found in the general area and on their specific project. This shall include but not be limited to:
 - 1. All plants hardy to USDA Hardiness Zone 5b
 - 2. Typical soil type – heavy clay
 - 3. Plants located next to streets must tolerate aerial salt.
- b. Produce high quality, easy to read, scaled drawings and details.
- c. Produce an aesthetic design using the unique features on the site.

Landscaping Required



District

Present Landscape Requirements

C-F, B-1, B-2, B-3, H-S, O-1, O-M, O-S-C, R-C, M-1, P-1

- ✓ Ten (10) foot greenbelt along any public street, with one (1) tree for every thirty (30) lineal feet of frontage.
 - ✓ Ten (10) percent of site area landscape – front and side yards only.
 - ✓ General Note – not more than twenty (20) percent of required landscape area will be covered with non-living material, i.e. woodchips, stone etc.
-

R-1, R-2

- ✓ Subdivision Control Ordinance requirements only
-

CR-1

- ✓ Ten (10) foot greenbelt along any public street, with one (1) tree planted for every twenty (20) feet of frontage.
 - ✓ Five (5) foot berm along any property line abutting a major thoroughfare with one (1) tree planted for every twenty (20) feet of frontage.
 - ✓ Fifteen (15) percent of site shall be landscaped open space.
 - ✓ One (1) tree shall be planted for every two (2) dwelling units.
-

R-1T, R-M, R-EC

- ✓ Ten (10) foot greenbelt along any public street with one (1) tree planted for every twenty (20) feet of frontage.
 - ✓ Four (4) foot berm along any property line abutting a major thoroughfare, with one (1) tree planted for every twenty (20) feet of frontage.
 - ✓ Five (5) berm along any property line abutting freeway, landscaped with double row six (6) feet apart, evergreen species, four (4) feet on center staggered two (2) feet on center.
-

RM-1

- ✓ Same as R-1T and R-M, with the exception that a five (5) foot rather than a four (4) foot minimum height berm is required along any property line abutting a major thoroughfare.
-

RM-2, RM-3

- ✓ Same as RM-1 with the following exceptions:
 - Seventy-five (75) percent (vs. 70%) of required yards shall be landscaped
 - Overall requirement for four hundred and fifty (450) feet of landscaped open space per dwelling unit. Sixty (60) percent of this open space area shall be located in direct proximity to the buildings.

CITY OF TROY

AN ORDINANCE TO AMEND
THE CODE OF THE CITY OF TROY
BY THE ENACTMENT OF CHAPTER 28

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as Chapter 28, Tree and Plant Regulations, of the Code of the City of Troy.

Section 2. Amendments

The Code of the City of Troy shall be amended as follows:

**CHAPTER 28
TREE AND PLANT REGULATIONS**

- 28.01.00 Purpose and Intent**
- 28.02.00 Definitions**
- 28.03.00 Responsibility**
- 28.04.00 Permits for Planting, Care and Removal of Plants – Public Space**
- 28.05.00 Plant Removal – Public Space**
- 28.06.00 Duties of Private Plant Owners**
- 28.07.00 Plant Protection – Public Spaces**
- 28.08.00 Plant Protection During Development – Public & Private Property**
- 28.09.00 Excavations Near Plants – Public Space**
- 28.10.00 Covering the Surface Near Trees – Public Space**
- 28.11.00 Regulations for New Planting – Public SPaces**
- 28.12.00 Corner Clearance (Visual Barrier Setback)**
- 28.13.00 Private Plant Inspection**

28.14.00 Lawn Extension and Subdivision Entry Islands/Cul-de-sac Islands

28.15.00 Tree Spacing

28.16.00 Violation of Tree and Plant Regulations

28.17.00 Procedure for Ordering Action on Violations of Tree and Plant Regulations

Figure #1

Figure #2

Figure #3

Figure #4

Figure #5

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this Ordinance adopting this penal regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this Ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, 2006.

Louise E. Schilling
Mayor

Tonni L. Bartholomew, MMC
City Clerk

March 29, 2006

TO: John M. Lamerato, Acting City Manager

FROM: Brian Murphy, Assistant City Manager/Services
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Agenda Study Item: *City Ordinance, Chapter 28 and the Tree Ordinance and Landscape Design & Tree Preservations Standards*

RECOMMENDATION:

Attached please find the revised versions of *City Ordinance, Chapter 28 – Tree Ordinance* as well as the *Landscape Design & Tree Preservation Standards*. The changes in these documents clarify ambiguous sections and include changes as outlined below. Staff has reviewed and submits for consideration the attached revised ordinances and standards.

Chapter 28 to some extent, supports the standards, therefore, they were revised together. Chapter 28 – Tree & Plant Ordinance is being submitted for Council approval and the Landscape Design and Tree Preservation Standards are being submitted for review.

This item was submitted as a Green Memo on March 20, 2006 and is being resubmitted as a Council Study Session item. Both documents have been reviewed as to form and legality by the City Attorney's office.

BACKGROUND:

The two documents, with little overlap, deal with three distinct areas. The purpose of Chapter 28 is to establish procedures, and practices governing the protection, installation and long-term maintenance of trees, plants and vegetation within the City of Troy. The Landscape Design and Tree Preservation Standards provides development standards for commercial properties and subdivisions. Chapter 28 overlaps and empowers the Standards in section # 28.02.15, 28.08.00, and 28.16.02. The following is a general outline of the functions of the two documents:

Chapter 28 – Tree & Plant Ordinance:

- ***Enforcement:***
 - 28.03.00 - Responsibility
 - 28.16.00 – Violation of Tree & Plant Ordinance
 - 28.17.00 – Procedure for Ordering Action on Violations

- ***Maintenance and planting of materials on municipal sites***
 - 28.04.00 – Permits for Planting, Care and Removal of Plants Public Space
 - 28.05.00 – Plant Removal – Public Space
 - 28.07.00 – Plant Protection – Public Spaces
 - 28.09.00 – Excavations near Plants – Public Spaces
 - 28.10.00 – Covering the Surface near Plants – Public Spaces
 - 28.11.00 – Regulations for New Planting – Public Spaces

-
- **Responsibilities of private plant owners**
 - 28.06.00 – Duties of Private Plant Owners
 - 28.12.00 – Corner Clearance
 - 28.13.00 – Private Plant - Inspection
 - 28.14.00 – Lawn Extension & Subdivision Entry Islands / Cul-de-Sac
 - 28.15.00 – Tree Spacing
-

- **Responsibilities of property owner before and during development**
 - 28.08.00 – Plant Protection during Development – Public & Private Property
-

The Landscape Design and Tree Preservation Standard:

- **Approval Process for Tree Preservation and Landscape Plans**
 - Page 3
-

- **Request for Variance/Waiver**
 - LD2.00.00 – Circumstances for Variations
 - LD3.00.00 – Request for Variance
 - LD5.00.00 – Request for Waiver of Tree Preservation Standards
-

- **Information required for review and format for submittal**
 - LD6.00.00 – Preliminary Tree Preservation Plan – General Requirements
 - LD7.00.00 – Final Tree Pres./ Landscape Plan – General Requirements
 - LD9.00.00 – Preliminary Tree Preservation Plans – Specific Requirements
 - LD10.00.00 – Final Tree Pres./ Landscape Plans – Specific Requirements
 - LD11.00.00 – Construction Drawings
 - LD12.00.00 – Landscape Planting Specifications
 - LD13.00.00 – Cost Estimate - Landscaping
 - LD14.00.00 – Submittal Requirements
 - LD16.00.00 – Submissions for Review
 - LD17.00.00 – Changes in Landscape Plan
-

- **Tree Preservation and Protection**
 - LD8.00.00 – Tree Preservation Options
 - LD23.00.00 – Tree & Plant Protection
-

- **Fees and Deposits**
 - LD18.00.00 – Tree Preservation / Landscape Plan Review Fee
 - LD19.00.00 – Landscape Deposit
-

- **Inspections**
 - LD22.00.00 – Landscape Installation
 - LD24.00.00 – Inspection Schedule
 - LD25.00.00 – Initial Site Inspection
 - LD26.00.00 – First Implementation Inspection
 - LD27.00.00 – Final Implementation Inspection
 - LD28.00.00 – Maintenance Inspection
-

- **Violations of these Standards**
 - LD20.00.00 – Tree Removals Prior to Final Site Approval
 - LD21.00.00 – Violation of Tree Preservation Plan
-

- **Qualifications and Responsibilities of Individuals**
 - LD29.00.00 – Landscape Contractor Qualifications
-

- LD30.00.00 – Landscape Contractor Responsibilities
- LD31.00.00 – Tree Appraiser Qualifications
- LD32.00.00 – Tree Appraiser Responsibilities
- LD37.00.00 – Landscape Designer Qualifications

- ***Plant Material Requirements, Site Preparation and Plant Installation***

- LD33.00.00 – Plant Material Requirements
- LD34.00.00 – Other Requirements Placed on Plant Materials
- LD35.00.00 – Prohibited Plant Materials
- LD36.00.00 – Site Preparation Prior to Planting

SUMMARY:

In brief, the following additions and alterations are proposed. Verbiage has been simplified for clarity and understanding. However, these changes are not presented in the following bulleted items. A Table of Contents has been added to both documents understanding.

Chapter 28 – Tree Regulations

- Name has been changed to reflect a more accurate range of responsibilities encompassed by this ordinance.
- Numbering system has been revised to a standardized system that has been implemented in City Ordinances.
- Purpose and Intent section added to clarify reason for this Chapter. (28.01.00)
- Definition section expanded to clarify existing and proposed verbiage (28.02.00)
- Director’s responsibilities required by this ordinance have been expanded. (28.03.00)
- Means of applying for planting permits, with an expansion of the Director’s authority have been revised and expanded. (28.04.00)
- Director’s responsibilities are clarified and expanded. (28.06.00)
- 28.07.00 has been expanded and clarified.
- 28.08.00 had been expanded and clarified to better support proposed changes to Landscape Design & Tree Preservation Standards.
- 28.09.00 was expanded to clarify City’s response to damage of unauthorized underground burials on municipal property by private property owners.
- 28.14.00 was added to clarify the responsibilities of private property owners with regards to maintenance of municipal property located in front of their respective properties.
- 28.15.00 is information added to this chapter to assist property owners in proper selection of trees, their proposed locations and how private trees relate to public plantings.
- 28.16.00 is an expansion and clarification of penalties for violations of ordinances in this chapter. Previously listed penalties have been removed from various sections of Chapter 28, and placed in this section as an inclusive list. Additionally, existing penalties have been upgraded and new penalties added.

Landscape Design and Tree Preservation Standards

- Tree Preservation / Landscape Submittal / Approval Process Outline – a new addition to the standards to be used as an aid by the developer. This section provides a road map to guide them through the approval process.

- LD5.00.00 has been altered to allow waivers only if there are no trees on the site.
- LD6.00.00 & LD9.00.00– informational requirements have been increased to facilitate faster evaluation of the proposed project.
- LD7.00.00 & LD10.00.00 – the Final Tree Preservation Plan and the Landscape Plan have been combined into one drawing for review purposes.
- LD8.00.00 - a new section that requires the developer to preserve a percentage of existing trees and/or provide for replacement of trees lost.
- LD15.00.00 expanded the City review authority.
- LD 11.00.00 through LD17.00.00 are relatively unchanged
- LD18.00.00 – The Tree Preservation Review fee and the Landscape Review fee has been combined into one fee, thereby simplifying the approval process.
- LD19.00.00 – the Implementation Deposit and the Maintenance Deposits have been increased to better assure the work is completed as per approved drawings and receives the proper upkeep to maintain desired results.
- LD20.00.00 through LD32.00.00 further explains the developer’s responsibilities and ties these responsibilities to City Ordinance.
- LD33.00.00 through LD 35.00.00 – clarifies and expands on plant material and planting requirements.
- LD36.00.00 – a new section, which is intended to improve plant-growing conditions, particularly in new subdivisions, thereby making it easier for new homeowners to maintain a quality landscape.
- LD37.00.00 – a new section that gives the minimum educational requirements to qualify as a designer of landscaping on projects requiring City approval.

Finally, the Landscape Design and Tree Preservation Standards contain various figures and fees (LD8.01.04, LD18.00.00, LD19.00.00) that require periodic adjustment. Staff requests the City Manager be authorized to approve these fees.

ARTICLE II. TREES*

***State law references:** Obnoxious plants and trees, MCL 124.151 et seq., MSA 12.270(1) et seq.; planting of trees along highways, MCL 247.231 et seq., MSA 9.351 et seq.; care of trees and shrubs along highways, MCL 247.241 et seq., MSA 9.361 et seq.

DIVISION 1. GENERALLY

Sec. 106-26. Definitions.

The following words, 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:

Director means the director of the city department of parks, forestry, and facilities and any representative, employee or agent authorized by the director to administer or enforce this article.

Drip line means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

Framing means a pruning technique which removes many inside branches and results in clusters of small branches at ends of the main limbs.

Park tree means any tree, shrub, bush or other woody vegetation planted or located within a city park.

Public utility means water, sewer and storm drainage systems and facilities, as well as electric, gas, telephone and cable television lines.

Roundover means the trimming of branches to present a sheared appearance over the total crown. This pruning technique results in cuts anywhere along a branch and not necessarily at the base of a limb.

Street tree means any tree, shrub, bush or other woody vegetation planted or located within a public street or road right-of-way under the city's jurisdiction.

Topping or pollarding means the severe cutting back of limbs to such a degree so as to remove the normal canopy or destroy or disfigure the tree. The terms "topping" and "pollarding" do not include normal pruning or maintenance.

Code 1976, § 4-14.02)

Cross references: Definitions generally, § 1-2.

Sec. 106-27. Findings and purpose.

(a) The city council finds trees growing in street or road rights-of-way, parks and other public grounds of the city are a vital element in the appearance, character and welfare of the city and its residents. These trees provide not only aesthetic benefits but functional ones as well by absorbing air pollutants and contamination and returning oxygen to the atmosphere, reducing noise, providing cooling shade and serving as borders, buffers, and screens.

(b) However, despite their many qualities, trees growing in, overhanging or interfering with street or road rights-of-way, parks and other public grounds of the city and dead, damaged or diseased trees located on private property in the city may, when they are not properly planted, maintained or removed, endanger pedestrians, motorists and adjacent residents; cause property damage; disturb or damage lawns, curbs, bikepaths, sidewalks and public utilities; harm other trees; and generally become a detriment, hazard, threat or potential liability for the city.

(c) Therefore, the purpose of this article is to promote and protect the public health, safety, and general welfare

of the city and its residents by providing for the regulation of the planting, care and removal of trees growing in, overhanging or interfering with public street and road rights-of-way, parks and other public grounds of the city and for the removal of trees located on private property in the city which threaten pedestrian or traffic safety or which may interfere with public utilities or public improvements.

(Code 1976, § 4-14.01)

Sec. 106-28. Promulgation of rules.

The director is authorized to promulgate additional rules, regulations, and specifications consistent with this article concerning the trimming, spraying, planting, care, maintenance, removal, pruning, and protection of street trees, park trees, or trees on other public grounds owned or leased by the city.

(Code 1976, § 4-14.07)

Sec. 106-29. Conflict with tree conservation standards.

If a conflict or disparity occurs between any sections and regulations of this article and those contained in article III of chapter 126 pertaining to tree conservation, with respect to an activity which is regulated under both articles, the more stringent section or regulation shall apply.

(Code 1976, § 4-14.09)

Sec. 106-30. Enforcement.

This article shall be enforceable by the director, the county sheriff's department, and other enforcement officers as the mayor may designate.

(Code 1976, § 4-14.08)

Secs. 106-31--106-55. Reserved.

DIVISION 2. TREES ON PUBLIC PROPERTY

Sec. 106-56. Street tree planting requirements.

The planting of street trees shall conform to the following requirements:

- (1) *Prohibited species.* The following prohibited tree species shall not be planted as street trees:
 - a. Box elder (*Acer negundo*);
 - b. Tree of heaven (*Ailanthus altissima*);
 - c. Catalpa (*Catalpa speciosa*);
 - d. Poplar species (*Populus sp.*);
 - e. Willow species (*Salix sp.*);
 - f. American elm (*Ulmus americana*);
 - g. Russian olive (*Elaeagnus angustifolia*);
 - h. Silver maple (*Acer saccharinum*); and
 - i. Siberian elm (*Ulmus pumila*).
- (2) *Spacing and distance requirements.* The new planting of street trees shall conform to the following minimum spacing and distance requirements, unless the director determines closer spacing or a lesser distance will not create an unsafe condition, threaten pedestrian or traffic safety, or interfere with public utilities or public improvements:

a. *Tree size when mature.* Tree size when mature shall be as follows:

TABLE INSET:

	Diameter (inches)	Height (feet)	Width (feet)
Small	Up to 12	Up to 30	Up to 30
Medium	Up to 24	30--50	30--50
Large	24+	50+	50+

b. *Minimum planting distances.* Minimum planting distances shall be as follows:

TABLE INSET:

	Tree Size		
	Large	Medium	Small
From Fixed Objects			
Curbs or road edge	10 feet	10 feet	10 feet
Fire hydrants	10 feet	10 feet	10 feet
Streetlights	10 feet	10 feet	10 feet
Sidewalks/pathways	3 feet	3 feet	3 feet
Driveways	10 feet	10 feet	10 feet
Street corners	(See section 138-1079)		
Public utility poles/overhead wires	25 feet	25 feet	15 feet
Underground public utility lines	8 feet	6 feet	4 feet
Adjacent trees (center to center)	30 feet	25 feet	20 feet
Adjacent lot	10 feet	10 feet	10 feet

(3) *Free from insects and disease.* Trees being planted as street trees shall be free from infectious or injurious insects or disease.

(4) *Traffic engineering standards.* The planting of street trees shall conform to any additional requirements concerning safe vehicle recovery area, crashworthiness, and other engineering standards as may be prescribed by the city traffic engineer.

(Code 1976, § 4-14.03)

Sec. 106-57. City authority.

Subject to article III of chapter 126 of this Code, the city may plant, prune, trim, treat, maintain and remove street trees, park trees or trees on other public grounds and rights-of-way of the city as the director determines necessary in order to promote or protect public health and safety or to preserve or enhance the symmetry and beauty of the trees. This authority specifically includes the power to remove any tree or portion thereof which the director determines:

- (1) Is in an unsafe condition;
- (2) Is afflicted with any infectious or injurious insects or disease;
- (3) Threatens pedestrian or traffic safety; or
- (4) May interfere with public utilities or public improvements.

(Code 1976, § 4-14.04.01)

Sec. 106-58. Adjacent owners planting street trees.

(a) *Permit required.* Street trees may be planted by an adjacent private property owner, at his sole cost,

provided a permit is obtained pursuant to section 94-33 of this Code prior to planting. Adjacent property owners shall not be charged a permit fee for planting trees.

(b) *Selection and location.* The selection and location of the trees shall conform to the provisions and requirements of this article and corner clearance requirements of section 138-1079, and the director shall have authority to designate location, size, species and/or variety of the trees as a condition of any permit for planting.

(c) *Condition.* Whether expressly stated or not, a condition of any permit for the planting of street trees shall be that the city may prune, trim, treat, maintain, and remove any such tree without compensation to the adjacent private property owner.

(Code 1976, § 4-14.04.02)

Sec. 106-59. Protection of public trees.

No person shall, without obtaining advance permission from the director, do any of the following in relation to any street tree, park tree or tree on any other public grounds and rights-of-way of the city:

- (1) *Objects on trees.* Fasten any sign, card, poster, wire, spike, nail, rope or other material to, around or through a tree;
- (2) *Fire.* Permit any fire to burn where the fire or its heat, smoke or fumes may or will injure a tree;
- (3) *Chemicals.* Permit any chemical to seep, drain or be emptied on or near a tree in an amount that may be toxic to the tree;
- (4) *Free passage to root system.* Deposit, store, place or maintain any stone, brick, sand, concrete or other material which may or will impede the free passage of air, water or fertilizer to the roots of a tree;
- (5) *Protective construction barrier.* Fail to provide, erect or maintain a suitable protective barrier around a tree likely to be injured during any construction;
- (6) *Electrical wires.* Knowingly permit any electrical wires to contact or be attached to a tree;
- (7) *Excavation or paving within drip line.* Excavate any ditch, tunnel or trench or lay any paved drive or pathway within the drip line of a tree;
- (8) *Vehicles too close to trunk.* Drive, park, haul or store any automobile, truck, trailer, boat, motorcycle, snowmobile, recreational vehicle or other motor vehicle within ten feet of a tree's trunk, unless or except while within the clearly delineated traveled portion or parking area of any street, road, parking lot or driveway; or
- (9) *Climbing using spurs.* Climb a tree while wearing spurs, unless that person is in the process of removing the tree.

(Code 1976, § 4-14.04.03)

Sec. 106-60. Prohibited pruning practices.

The topping, pollarding, framing or roundover of any street tree, park tree or tree on any other public ground or right-of-way of the city is prohibited, except with respect to shrubs or bushes located within a public street or road right-of-way. However, ordinary care, pruning and maintenance of street trees shall be allowed.

(Code 1976, § 4-14.04.04)

Sec. 106-61. Street tree removal by private persons.

(a) *Advance permission required.* No person shall remove or destroy any street tree without first obtaining a permit in accordance with section 94-33 of this Code.

(b) *Condition of removal.* As a condition of removal of a healthy street tree, the director may require the person removing or causing removal of the street tree to plant, at the person's sole expense, a tree of a kind designated by the director in place of the one removed at the removal site or an alternate site approved by the director.

(c) *Liability protection.* As a further condition of removal of a street tree, the director shall require the person removing or causing removal of a street tree to present a certificate of insurance evidencing insurance coverage

in an amount the director deems necessary to indemnify for any liability for bodily injury or property damage which may arise from the tree removal operation.

(d) *Protection of adjacent trees.* Any person removing a street tree shall protect adjacent trees from damage in a manner approved by the director.

(e) *Stumps and debris.* Any person removing a street tree shall cut or remove the stump to below the surface of the ground and shall remove and dispose of all debris from the removed street tree.

(f) *Bond.* To ensure faithful performance of the conditions and requirements of this section, any person removing a street tree shall, prior to removal, submit to the director a cash bond in an amount equal to the estimated cost of completing the work, which bond shall be refunded upon satisfactory completion of the work.

(Code 1976, § 4-14.04.05)

Secs. 106-62--106-90. Reserved.

DIVISION 3. TREES ON PRIVATE PROPERTY

Sec. 106-91. Authority of city.

If the owner of any private property on which a tree overhangs any public street or road right-of-way, sidewalk, bikepath or other public ground of the city fails to prune the tree as required under this division after receiving written notice from the city requesting the work to be performed, the city shall have the authority to prune, trim and/or treat the tree or to remove any dead, broken or decayed limbs and branches therefrom, as determined necessary by the director in order to achieve and maintain required minimum height or corner clearance or to eliminate obstruction of streetlights, street identification signs, or traffic control devices and signs. The city may charge the owner for the reasonable cost of the work, and if the charges are not paid, they may be assessed against the property in accordance with section 90-30 of this Code.

(Code 1976, § 4-14.05.04)

Sec. 106-92. Pruning by owner.

The owner of any private property on which a tree that overhangs any public street or road right-of-way, sidewalk or bikepath in the city shall keep the branches pruned in order to achieve and maintain a minimum height clearance of 14 feet over the traveled portion of the street or road and ten feet over a sidewalk or bikepath. In addition, the owner shall keep the tree pruned so as not to obstruct or obscure streetlights, street identification signs, or traffic control devices or signs.

(Code 1976, § 4-14.05.01)

Sec. 106-93. Fallen, broken, decayed limbs.

The owner of any private property on which a tree that overhangs any public street or road right-of-way, sidewalk, bikepath or other public ground of the city shall be responsible for removing all dead, broken or decayed limbs and branches that may endanger the public. The owner shall also promptly remove from the public street or road right-of-way, sidewalk or bikepath any branches or limbs that fall from the tree.

(Code 1976, § 4-14.05.02)

Sec. 106-94. Corner clearance.

Trees, shrubs or bushes growing on private property within a required corner clearance zone, as distinguished from new plantings which are prohibited in sections 106-56 and 138-1079, shall be removed by the property owner or else kept pruned to a height of 30 inches or less above the public street or road surface. Alternatively, large existing trees need not be removed and may be left within the required corner clearance zone, provided they are kept pruned to achieve and maintain the minimum height clearances set forth in section 106-92.

(Code 1976, § 4-14.05.03)

Sec. 106-95. Removal.

(a) *Public nuisance.* Any tree growing or located on private property in the city which, in the director's judgment, threatens pedestrian or traffic safety or may interfere with public utilities or public improvements due to damage, death, injurious disease, or insect infestation of the tree shall be considered a public nuisance.

(b) *Notice and abatement.* In accordance with the procedure set forth in section 90-31 of this Code, the city may, after providing notice to the owner of the private property, cause the tree to be removed as the director deems necessary in order to abate the public nuisance, and the city shall assess the cost of abatement to the owner.

(Code 1976, § 4-14.06)

Secs. 106-96--106-120. Reserved.

ARTICLE III. TREE CONSERVATION*

*Cross references: Vegetation, ch. 106.

DIVISION 1. GENERALLY

Sec. 126-261. Definitions.

The following words, 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:

Agriculture means the use of land for the primary purpose of deriving income from growing plants or trees on land, including but not limited to land used principally for fruit or timber production, but not including land used principally for another use and only incidentally for growing trees or plants for income.

Commercial nursery or tree farm means a licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and grown for sale to the general public in the ordinary course of the licensee's business.

Diameter at breast height (dbh) means a tree's diameter in inches measured by diameter tape at 4 1/2 feet above the ground. On multistem trees, the largest diameter stem shall be measured.

Drip line means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

Regulated tree means a tree having six inches or greater diameter at breast height, which is not otherwise exempt from regulation under this article.

Remove or removal means the act of removing or destroying a tree by digging up or cutting down, or the effective removal or destruction through damage, poison, or other means.

Transplant means the relocation of a tree from one place to another on the same property.

Tree means any living, self-supporting, woody plant of a species which normally grows to an overall height of 15 feet or more.

Undeveloped means a parcel of land which is unplatted and substantially unimproved. With respect to land that is partially improved by virtue of a building or other improvement located on a portion of the land, the portion of the land that does not contain the building or improvement shall be considered undeveloped.

(Code 1976, § 4-12.03)

Cross references: Definitions generally, § 1-2.

Sec. 126-262. Findings.

Rapid growth, the spread of development, and increasing demands upon natural resources have the effect of encroaching upon, despoiling, or eliminating many of the trees and other forms of vegetation and natural resources and processes associated therewith, which, if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreation and economic assets to current and future residents of the city. Specifically, the city council finds that:

(1) *Public health protected.* Tree and woodland growth protects public health through the absorption of air pollutants and contamination, through the reduction of excessive noise and mental and physical damage related to noise pollution, and through its cooling effect in the summer months;

(2) *Public safety enhanced.* Trees and woodlands enhance public safety through the prevention of erosion, siltation, and flooding; and

(3) *Essential component of general welfare.* Trees and woodland areas are an essential component of the general welfare of the city, providing play and recreational areas, natural beauty, and an irreplaceable heritage for current and future city residents.

(Code 1976, § 4-12.01)

Sec. 126-263. Purpose.

The purposes of this article are to:

- (1) Provide for the protection, preservation, proper maintenance and use of trees and woodlands located in this city in order to minimize disturbance to them and to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or from the destruction of the natural habitat.
- (2) Protect the woodlands, including trees and other forms of vegetation, of this city for their economic support of local property values when allowed to remain uncleared and/or unharvested and for their natural beauty, wilderness character, and their geological, ecological, or historical significance.
- (3) Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of this city.

(Code 1976, § 4-12.02)

Sec. 126-264. Applicability of article.

- (a) *Undeveloped land.* This article shall apply to all land in the city which was undeveloped on August 3, 1988.
- (b) *Approved site plans and plats.* This article shall apply to all land included within a site plan, preliminary subdivision plat, or condominium plan submitted to the city for approval, except this article shall not apply to land included within a site plan which received final approval or a preliminary subdivision plat which received tentative approval prior to August 3, 1988, provided the site plan or plat approval remains in effect and in good standing under article III of chapter 122 or under chapter 138 of this Code.

(Code 1976, § 4-12.04)

Sec. 126-265. Responsibility for enforcement.

Compliance with this article shall be enforced by the mayor, the county sheriff's department, the building department director and ordinance enforcement officers, and other enforcement officers as the mayor may designate.

(Code 1976, § 4-12.17.05)

Sec. 126-266. Enforcement.

- (a) *Municipal civil infraction.* Any person who violates any section of this article shall be responsible for a municipal civil infraction, subject to a fine as provided in section 66-37, plus costs and other sanctions for each infraction.
- (b) *Injunctive relief.* Any activity conducted in violation of this article is declared to be a nuisance per se, and the city may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.
- (c) *Fee for illegally removed trees.* In addition to any civil fine or sanction provided for a determination of responsibility for violation of this article, and notwithstanding whether or not the city has commenced a civil suit for injunctive relief:
 - (1) *Payment to city tree fund.* Any person who removes or causes any tree to be removed except in accordance with this article shall forfeit and pay to the city a civil fee equal to the total value of trees illegally removed or damaged, as computed from the International Society of Arboriculture Shade Tree Evaluation Guide or The Michigan Shade Tree Evaluation Guide. The fee shall accrue to the city, and, if necessary, the city may file a civil action to recover the fee. The city shall place any sum collected in the city tree fund.

(2) *Tree replacement.* Alternatively the city may require replacement of illegally removed or damaged trees as restitution in lieu of the fee. Replacement will be on an inch-for-inch basis computed by adding the total diameter measured at the diameter at breast height in inches of the illegally removed or damaged trees, unless an alternative basis of replacement or restitution is approved by the city. The city may use other reasonable means to estimate the tree loss if destruction of the illegally removed or damaged trees prevents exact measurement.

(3) *Fee payment and tree replacement.* The city may also require a combination of fee payment and tree replacement.

(d) *Stop work order.* The city may also issue a stop work order or withhold issuance of a certificate of occupancy, permits or inspections until the sections of this article, including any conditions attached to a tree removal permit, have been fully met. Failure to obey a stop work order shall constitute a violation of this article.

(Code 1976, § 4-12.17)

Sec. 126-267. Exceptions to tree removal permit requirement.

Notwithstanding the requirements of subdivisions I and II of division 3 of this article, the following activities are allowed without a tree removal permit, unless otherwise prohibited by statute or ordinance:

(1) *Agriculture, nursery business, tree farm.* Tree removal or transplanting occurring during use of land for agriculture or the operation of a commercial nursery or tree farm, but only in regard to trees planted for commercial nursery or tree farm purposes, and not in regard to naturally occurring trees.

(2) *Emergencies.* Actions made necessary by an emergency, such as tornado, windstorm, flood, freeze, dangerous and infectious insect infestation or disease, or other disaster, in order to prevent injury or damage to persons or property or to restore order.

(3) *Road right-of-way.* Tree removal or transplanting performed by or on behalf of the city, the county road commission or the state department of transportation within a road right-of-way, where the trees pose a safety hazard to pedestrian or vehicular traffic or threaten to disrupt public utility services or where necessary for road improvement or maintenance, provided that all feasible and prudent efforts have been made to prevent or minimize tree damage or loss and, further provided, that prior written notice is given to the department of parks, forestry, and facilities.

(4) *Utilities.* Tree removal by the city or public or private utility companies which is necessary in connection with the installation, repair or maintenance of utilities, provided that all feasible and prudent efforts have been made to prevent or minimize tree damage or loss and, further provided, that prior written notice is given to the department of parks, forestry, and facilities. For purposes of this subsection, utilities shall include water, sewer and stormwater drainage systems and facilities, as well as electric, gas, telephone, telecommunications, and cable television lines.

(5) *Dead, diseased or damaged trees.* Removal of dead, diseased, or damaged trees, where the damage resulted from an accident or nonhuman cause and where the department of parks, forestry, and facilities concurs the nature or extent of the disease or damage warrants removal.

(6) *Nominal activity.* Where the activity involves the removal or transplanting of three or fewer regulated trees within a six-month period and is not related to the development of a parcel or construction of a building or structure. This subsection shall not apply to trees designated as historic or landmark trees pursuant to division 4 of this article.

(7) *Residential (small parcels).* Removal or transplanting of trees growing on occupied one-family residential parcels of less than one acre. This subsection shall not apply to trees located in the public right-of-way or to trees designated as historic or landmark trees pursuant to division 4 of this article.

(8) *Residential (large parcels).* On occupied one-family residential parcels of one acre or more, the removal or transplanting of trees due to construction of appurtenances or structures accessory to existing structures. This subsection shall not apply to trees located in the public right-of-way or to trees designated as historic or landmark trees pursuant to division 4 of this article.

(Code 1976, § 4-12.06)

Secs. 126-268--126-295. Reserved.

DIVISION 2. VARIANCE

Sec. 126-296. Authority.

The city council may grant a variance from this article when undue hardship may result from strict compliance.

(Code 1976, § 4-12.16.01)

Sec. 126-297. Notice.

(a) *Adjoining property owners.* The city shall send notice of a request for a variance from this article by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the variance is requested, including property directly across public rights-of-way and easements.

(b) *Timing and content.* The notice shall be sent at least seven days before the meeting at which the city council will consider the variance request and shall include a statement that interested persons may examine the application for a variance at the planning department.

(Code 1976, § 4-12.16.02)

Sec. 126-298. Conditions.

In granting any variance from this article, the city council may prescribe conditions that it deems necessary or desirable for the public interest.

(Code 1976, § 4-12.16.03)

Sec. 126-299. Findings.

No variance from this article shall be granted unless the city council finds as follows:

- (1) There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.
- (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
- (3) The variance will further the objectives and policies of this article, this Code, the zoning ordinance in chapter 138, and the master land use plan.

(Code 1976, § 4-12.16.04)

Secs. 126-300--126-325. Reserved.

DIVISION 3. TREE REMOVAL

Subdivision I. In General

Sec. 126-326. Plat or site plan approval.

A regulated tree that is to be removed as part of land clearing, construction or development activity which requires site plan or subdivision plat approval may be removed only after final approval of the site plan or preliminary subdivision plat. Such final approval must precede issuance of the tree removal permit.

(Code 1976, § 4-12.05.02)

Sec. 126-327. One-family residential developments.

In addition to other requirements of this article, there shall be compliance with the following requirements in all one-family residential developments which, as proposed, will result in two or more lots or building sites through land division, subdivision, or condominiums:

- (1) *Building envelopes.* The developer shall designate building envelopes for all structures as follows:
 - a. *One-family residential developments.* The building envelope for lots and building sites in one-family residential subdivisions, site condominiums, and other one-family residential developments which, as proposed, will result in two or more lots or building sites shall be the buildable area remaining on a lot or building site after satisfying the setback requirements in chapter 138.
 - b. *Activities within building envelope.* Once building envelopes have been designated in accordance with subsection (1)a of this section and a tree removal permit has been approved for the development, it shall not be necessary to obtain a tree removal permit for the subsequent construction of structures or improvements or for other activities occurring within a building envelope.
 - c. *Activities outside building envelope.* Subject to the exceptions enumerated in section 126-267, a separate, additional tree removal permit shall be required for construction or development activities conducted by the developer or builder outside of the building envelope designated in accordance with subsection (1)a of this section.
- (2) *Minimum preservation percentage.* For one-family residential developments which, as proposed, will result in two or more lots or building sites through land division, subdivision, or condominiums, the developer shall preserve and leave standing and undamaged a minimum of 37 percent of the total number of regulated trees which exist within the land area being developed, prior to development. However, trees contained within the designated building envelopes shall not count toward the required minimum preservation percentage.

(Code 1976, § 4-12.05.03)

Sec. 126-328. Inspections.

Under this article, the permit applicant or permit holder shall allow city inspectors to enter and inspect the premises at any reasonable time during the application process and land clearing, construction, development, and tree removal activities to verify compliance with this article. Failure to allow inspection shall constitute a violation of this article.

(Code 1976, § 4-12.13)

Secs. 126-329--126-355. Reserved.

Subdivision II. Permits

Sec. 126-356. Required.

Subject to the exceptions enumerated in section 126-267, and further subject to section 126-327 relative to forest management permits, no person shall remove, cause to be removed, transplant, damage, or destroy, on any land in the city to which this article applies, any regulated tree without first obtaining a tree removal permit. In addition, a tree removal permit shall be required for the construction of any structure, land clearing, grubbing, trenching, grading, excavating, filling, or placement within the drip line of any regulated tree of any material which may cause harm to the tree.

(Code 1976, § 4-12.05.01)

Sec. 126-357. Forest management permit.

(a) *Required.* Where the proposed tree removal is not related to land clearing, development of a parcel, or construction of a structure or other improvement, but rather is for the purpose of maintaining and enhancing a wooded area in accordance with professional forestry management methods, the director of the department of parks, forestry, and facilities may grant a forest management permit in lieu of a tree removal permit.

(b) *Application.* An application for a forest management permit must be accompanied by the fee prescribed in division 3 of article IV of chapter 110 and a forest management plan prepared by a registered or certified professional forester. The forest management plan shall, at a minimum, include a description of the management program, a schedule for the work to be performed, reasons for the proposed tree removal, and an explanation of benefits to be obtained through the proposed tree removal.

(c) *Minimum duration.* The area under a forest management permit must remain under forest management for a minimum of five years.

(d) *Supervision.* The forest management permit holder shall retain a registered or certified professional forester to supervise and direct all work under a forest management permit.

(Code 1976, § 4-12.05.04)

Sec. 126-358. Application and fee.

(a) *Required.* A person seeking a tree removal permit must submit a written application to the department of planning when the permit is requested in connection with a development requiring site plan, plat, or condominium plan review or to the department of parks, forestry, and facilities for any other requests. The applicant shall pay a nonrefundable application/permit fee in accordance with division 3 of article IV of chapter 110.

(b) *Time of application.* Application for a tree removal permit shall be made before commencement of the activity for which the tree removal permit is required. Where the site is proposed for development or other activity necessitating a building permit or site plan or plat review, application for a tree removal permit shall be made prior to or concurrent with building permit application or site plan or plat submittal.

Sec. 126-359. Tree survey.

The permit applicant shall provide four copies (ten copies when accompanying a plat, site plan, or condominium plan) of a tree survey at a minimum scale of one inch equals 100 feet and containing the following additional information:

(1) *Property dimensions.* The shape and dimensions of the property, and the location of any existing and proposed structure or improvement. The location of proposed structures or improvements must also be staked at the site;

(2) *Location of trees.* The Location of all existing regulated trees identified by their diameter at breast height and their common and botanical name. Trees proposed to remain, to be transplanted, or to be removed shall be so designated on the tree survey, and all regulated trees must be numbered and marked in the field;

(3) *Tree protection.* A description and depiction on the tree survey of how regulated trees intended to remain or to be relocated will be protected during construction or development activity, and the location of protective barriers;

(4) *Easements and setbacks.* Location and dimension of existing and proposed easements, as well as all setbacks required by chapter 138;

(5) *Grade changes.* Designation of existing topography and any grade changes proposed for the property, and an explanation of how proposed grade changes may affect regulated trees intended to remain or to be located, including a topographic elevation at the base of all trees to be saved within 20 feet of any proposed construction or development activity;

(6) *Replacement.* A landscape plan and cost estimate for the proposed tree replacement program with a detailed explanation including the number, size and species; and

(7) *Tree identification.* A statement that all trees being retained will be identified by painting, flagging, or

some other approved method and, where protective barriers are necessary, that they will be erected before work starts.

(Code 1976, § 4-12.07.01)

Sec. 126-360. Large tracts.

For construction or development activities necessitating plat, site plan, or condominium plan approval or for any tracts of ten acres or larger, the applicant for a tree removal permit shall provide copies of the following additional information:

- (1) The required tree survey which must be prepared by a registered engineer, registered landscape architect, or registered land surveyor; and
- (2) All regulated trees shall be numbered and marked in the field.

(Code 1976, § 4-12.07.04)

Sec. 126-361. Departmental review.

- (a) *Generally.* The department of planning shall review the submitted tree removal permit application to verify the applicant has provided all required information.
- (b) *Referral to appropriate departments.* Completed applications shall be referred by the planning department to other appropriate city departments and consultants for review and comment.
- (c) *Field inspection or review meeting.* The city may conduct a field inspection or review meeting.
- (d) *Results forwarded to reviewing authority.* City departments involved in the review shall submit their report and recommendations to the director of the department of planning who shall forward them to the appropriate reviewing authority.

(Code 1976, § 4-12.08.01)

Sec. 126-362. Decision to approve or deny.

- (a) *Standards.* The decision to approve or deny a tree removal permit shall be governed by the review standards enumerated in section 126-368.
- (b) *Site plans.* Where the site is proposed for development necessitating site plan, subdivision plat, or condominium plan review by the planning commission, the planning commission shall be responsible for approving or denying the application for a tree removal permit.
- (c) *Other.* Where neither site plan, subdivision plat, nor condominium plan review is required by city ordinance, the director of the department of parks, forestry, and facilities shall be responsible for approving or denying the application for a tree removal permit.

(Code 1976, § 4-12.08.02)

Sec. 126-363. Notice.

Before the reviewing authority makes a decision on a tree removal permit application, notice of the tree removal permit application shall be sent by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the tree removal permit is requested, including property directly across public rights-of-way and easements. The notice shall be sent at least seven days before the reviewing authority is to make its decision and shall include a statement that interested persons may examine the application at the planning department or parks, forestry, and facilities department. Where the planning commission's recommendation is required pursuant to section 126-362, notice to adjoining property owners shall be required before the planning commission meeting only.

(Code 1976, § 4-12.08.03)

Sec. 126-364. Denial.

Whenever an application for a tree removal permit is denied, the permit applicant shall be notified, in writing, of the reasons for denial.

(Code 1976, § 4-12.08.04)

Sec. 126-365. Approval.

Whenever an application for a tree removal permit is approved, the reviewing authority shall:

- (1) *Conditions.* Attach to the approval of the permit any reasonable conditions considered necessary by the reviewing authority to ensure the intent of this article will be fulfilled and to minimize damage to, encroachment upon, or interference with natural resources and processes within wooded areas; and
- (2) *Performance guarantee.* Require the permit grantee to file with the city a cash or corporate surety bond or irrevocable bank letter of credit in an amount, if any, necessary to guarantee compliance with tree removal permit conditions and this article.

(Code 1976, § 4-12.08.05)

Sec. 126-366. Site plans, condominium plans and plats.

With respect to land which is the subject of a site plan, condominium plan, subdivision plat, or land division submitted to the city for approval, a tree removal permit shall not be effective nor shall the permit holder remove, cause to be removed, transplant, or damage any regulated tree until after both final approval of the site plan, condominium plan, preliminary subdivision plat, or land division and approval by the city engineer of construction and engineering plans for the proposed construction or development activity have occurred.

(Code 1976, § 4-12.08.06)

Sec. 126-367. Duration.

Tree removal permits shall remain in effect for one year or the duration of the approved site plan, preliminary subdivision plat, or condominium plan, if any, they relate to, whichever period is less.

(Code 1976, § 4-12.08.07)

Sec. 126-368. Application review standards.

The following standards shall govern the approval or denial of an application for a tree removal permit:

- (1) *Preservation and conservation.* No application shall be denied solely because some trees grow on the site. Nevertheless, tree preservation and conservation, especially with respect to trees designated as historic or landmark trees pursuant to division 4 of this article, shall be of paramount concern and importance.
- (2) *Developmental alternatives.* Preservation and conservation of wooded areas, trees, similar woody vegetation, wildlife and related natural resources and processes shall have priority over development when there are feasible and prudent location alternatives on site for proposed buildings, structures, or other site improvements.
- (3) *Diversity of species.* Diversity of tree species shall be maintained where essential to preserving a wooded area.
- (4) *Quality of trees.* Quality trees shall be preserved whenever it is feasible to do so. In evaluating quality of trees, the reviewing authority shall consider the following:
 - a. Soil and habitat quality;
 - b. Tree species;
 - c. Tree size and density;

- d. Health and vigor;
- e. Understory size, density, quality, and type;
- f. Wildlife presence; and
- g. Other factors such as function as wind block, noise buffer, cooling or heating effect, and scenic value.

(5) *Land clearing.* Where the proposed activity consists of land clearing, it shall be limited to designated street rights-of-way, drainage and utility areas, and areas necessary for the construction of buildings, structures, or other site improvements.

(6) *Residential development.* Where the proposed activity involves residential development, residential units shall, to the extent reasonably feasible, be designed and constructed to blend into the natural setting of the landscape.

(7) *Compliance with statutes and ordinances.* The proposed activity shall comply with all applicable statutes and ordinances.

(8) *Relocation or replacement.* The proposed activity shall include necessary provisions for tree relocation or replacement, in accordance with subdivision III of this division and tree protection, in accordance with subdivision IV of this division.

(9) *Limitation.* Tree removal or transplanting shall be limited to instances where:

a. *Necessary for construction.* Removal or transplanting is necessary for the construction of a building, structure or other site improvement, and the permit applicant has shown there is no feasible and prudent location alternative on site for a proposed building, structure or other site improvement; or

b. *Disease, damage, etc.* The tree is diseased, damaged or in danger of falling; is located too close to existing or proposed buildings or structures; interferes with existing utility service or drainage; creates unsafe vision clearance; or does not conform to other city ordinances or regulations.

(10) *Historic and landmark trees.* The removal of trees designated under this article as historic or landmark trees shall not be permitted where there is a reasonable alternative that would allow preservation of the trees.

(Code 1976, § 4-12.09)

Sec. 126-369. Issuance; appeal of denial.

(a) *Waiting period before issuing permit.* The city shall not issue a tree removal permit approved by the planning commission or director of the department of parks, forestry, and facilities until ten calendar days following the approval. There shall be no waiting period relative to permits approved by the city council.

(b) *Right of appeal.* Relative to the decision of the planning commission or the director of the park, forestry, and facilities department to approve or deny a tree removal permit, any person denied a tree removal permit or any aggrieved owner of property contiguous to property for which a tree removal permit has been approved, including property directly across public rights-of-way and easements, may appeal such decision to the city council as follows:

(1) *Time to appeal.* An appeal must be filed with the city clerk, in writing, within the ten-calendar-day period following the approval or denial being appealed.

(2) *Issuance of permit suspended.* The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the city council's decision on appeal. The city council, upon review, may affirm, reverse, or modify the decision rendered by the planning commission or director of the department of parks, forestry, and facilities.

(c) *City council decisions.* A decision of the city council to approve or deny a tree removal permit is not appealable to the city council.

(Code 1976, § 4-12.12)

Subdivision III. Tree Relocation or Replacement

Sec. 126-396. Required.

A tree removal permit holder shall replace or relocate each regulated tree removed pursuant to a tree removal permit.

(Code 1976, § 4-12.10.01)

Sec. 126-397. Basis for relocation or replacement credit.

The permit holder shall relocate or replace trees removed pursuant to a tree removal permit on a one-for-one basis, subject to the following:

(1) *Deciduous trees.* All deciduous replacement trees must measure two inches in diameter or greater, measured at six inches above ground. However, for every additional one-half inch increment a replacement tree exceeds two inches in diameter, the city shall credit the permit holder with having replaced an additional one-half of a tree.

a. *Example.* For example, if the permit holder uses replacement trees measuring 2 1/2 inches in diameter, for each replacement tree measuring 2 1/2 inches in diameter the city shall credit the permit holder as having replaced 1 1/2 trees.

b. *Trees greater than three inches in diameter.* If the permit holder uses replacement trees measuring three inches in diameter or greater, for each replacement tree measuring three inches in diameter or greater the city shall credit the permit holder as having replaced two trees.

(2) *Coniferous trees.* All coniferous replacement trees must measure eight feet in height or greater. However, for every additional one-foot increment a replacement tree exceeds eight feet in height, the city shall credit the permit holder with having replaced an additional one-half of a tree.

a. *Example.* For example, if the permit holder uses replacement trees measuring nine feet in height, for each replacement tree measuring nine feet in height the city shall credit the permit holder as having replaced 1 1/2 trees.

b. *Trees greater than ten feet in height.* If the permit holder uses replacement trees measuring ten feet in height or greater, for each replacement tree measuring ten feet in height or greater the city shall credit the permit holder as having replaced two trees.

(Code 1976, § 4-12.10.02)

Sec. 126-398. Replacement tree requirements.

(a) *Quality.* Trees replaced under this subdivision shall have shade potential and other characteristics comparable to the removed trees, shall conform to the guidelines established in the most recent edition of the American Standard for Nursery Stock (ANSI Z60.1-1990), and must be approved by the city prior to planting.

(b) *Planting and guarantee.* Replacement and relocated trees must be staked, fertilized, and mulched and shall be guaranteed by the tree removal permit holder to exhibit a normal growth cycle for at least one year following planting.

(c) *Suggested tree species.* A list of suggested replacement tree species shall be kept on file in the department of parks, forestry, and facilities.

(Code 1976, § 4-12.10.03)

Sec. 126-399. Replacement tree location.

(a) *City approval required.* The city shall approve tree relocation or replacement locations in order to provide optimum enhancement, preservation, and protection of wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced on site and within the same general area as trees removed, but such trees shall not be relocated or replaced in the building envelope of a one-family residential lot or building site, nor shall such trees count towards landscape screening and buffer requirements of division 5 of article VIII of chapter 138.

(b) *Relocation or replacement off site.* Where it is not feasible and desirable to relocate or replace trees on site, relocation or replacement may be made at another approved location in the city.

(c) *City tree fund.* Where it is not feasible and desirable to relocate or replace trees on site or at another approved location in the city, the tree removal permit holder shall pay into the city tree fund, which fund is hereby created, an amount of money approximating the current market value of the replacement trees that would otherwise be required. The city shall use the city tree fund for the purpose of maintaining and preserving wooded areas and for planting and maintaining trees within the city.

(Code 1976, § 4-12.10.04)

Sec. 126-400. Exceptions.

(a) *Unplatted residential parcel.* For any unplatted residential parcel, trees located within the area of the footprint of only one proposed principal dwelling or any additions thereto and within 30 feet around the dwelling or addition are not required to be relocated or replaced. Furthermore, trees located within any proposed driveway, utility or other site improvement necessary to support the principal dwelling or addition and the area within ten feet of any such improvement are also not required to be relocated or replaced.

(b) *Effect of other requirements.* The exception in subsection (a) of this section shall not be construed to waive or supersede any other requirement of this article, and the applicant must still obtain a tree removal permit.

(Ord. No. 423, § 1, 11-5-1997)

Secs. 126-401--126-425. Reserved.

Subdivision IV. Tree Protection During Construction

Sec. 126-426. Placing materials near tree.

No person may conduct any construction or development activity within the drip line of any regulated tree not approved for removal, including but not limited to land clearing, grubbing, trenching, grading, or filling, nor shall any person place solvents, building material, construction equipment, soil deposits, or other harmful materials within the drip line unless authorized by the department of parks, forestry, and facilities.

(Code 1976, § 4-12.11.01)

Sec. 126-427. Attachments to trees.

During construction or development activity, no person shall attach any device or wire to any regulated tree not approved for removal.

(Code 1976, § 4-12.11.02)

Sec. 126-428. Identification and protective barrier.

Before development, land clearing, filling, or any other land alteration or activity for which a tree removal permit is required, the permit holder shall clearly mark by painting, flagging, or other approved method all trees to be removed and shall erect and maintain suitable barriers to protect remaining trees. Protective barriers must be inspected and approved by the city before the work begins. Protective barriers shall remain in place until the city authorizes their removal or issues a final certificate of occupancy, whichever occurs first. Wood, metal, or other approved material shall be utilized in the construction of barriers. Barriers are required for all trees not approved for removal, except for the

following:

(1) *Rights-of-way and easements.* Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of areas to be cleared.

(2) *Large, separate areas.* Large property areas separate from the construction or land clearing area onto which no equipment will venture may also be cordoned off as described in subsection (1) of this section.

(Code 1976, § 4-12.11.03)

Sec. 126-429. Protective barrier when no permit required.

With respect to construction or development activity for which no tree removal permit is required under this article but which, in the city's judgment, may adversely affect regulated trees located on or off site, the person conducting such activity shall erect and maintain a suitable protective barrier for such trees.

(Code 1976, § 4-12.11.04)

Secs. 126-430--126-455. Reserved.

DIVISION 4. HISTORIC AND LANDMARK TREES

Sec. 126-456. Nomination for historic trees.

Any person may nominate a tree within the city for designation as an historic tree based upon its age, type, size, or historical or cultural significance.

(Code 1976, § 4-12.14.01)

Sec. 126-457. Review of nomination for historic trees by historic districts commission.

(a) *Generally.* Nominations for designation of an historic tree shall be considered by the historic districts commission. A copy of the nomination, which shall include supporting documentation, shall be referred to the historic districts commission for review.

(b) *Nominee other than owner.* Where the nomination is made by someone other than the owner of the property where the tree is located, the owner shall be notified in writing, by certified mail, at least seven days in advance of the time, date, and place that the historic districts commission will consider the designation.

(c) *Notice.* The notice shall notify the owner that the designation of the tree as an historic tree will make it unlawful to remove or damage the tree absent the granting of a tree removal permit by the city. The notice shall further advise the owner that his agreement is necessary in order for the tree to be designated as an historic tree.

(Code 1976, § 4-12.14.02)

Sec. 126-458. Designation of historic tree.

Provided the owner agrees with the designation of an historic tree, the historic districts commission may designate a tree as a historic tree upon determining that, because of one or more of the following unique characteristics, the tree should be preserved as an historic tree because the tree is:

- (1) Associated with a notable person or historic figure;
- (2) Associated with the history or development of the nation, the state, or the city;
- (3) Associated with an eminent educator or education institution;

- (4) Associated with art, literature, law, music, science, or cultural life;
- (5) Associated with early forestry or conservation;
- (6) Associated with native American history, legend, or lore; or
- (7) Has notable historic interest in the city because of its age, type, size, or historic association.

(Code 1976, § 4-12.14.03)

Sec. 126-459. Effects of historic tree designation.

Upon designation of a tree as an historic tree, it shall be unlawful, subject to the exceptions in section 126-267, for any person to remove or damage the tree without first obtaining a tree removal permit.

(Code 1976, § 4-12.14.04)

Sec. 126-460. Record of designation of historic trees; recorded notice.

The department of planning shall maintain a record of historic tree designations, and for every designation, the city shall record a notice with the register of deeds identifying the land and advising that the land contains a designated historic tree which is regulated under this division and which may not be removed without a tree removal permit.

(Code 1976, § 4-12.14.05)

Sec. 126-461. Criteria for landmark trees.

All trees listed in the American Forestry Association's National Registry of Big Trees, the Michigan Botanist's Champion Trees of Michigan, or in the city's Big Tree Registry are considered landmark trees.

(Code 1976, § 4-12.15.01)

Sec. 126-462. Removal of landmark trees.

Subject to the exceptions in section 126-267, a landmark tree shall not be removed without a tree removal permit.

(Code 1976, § 4-12.15.02)

Sec. 126-463. Replacement of landmark trees.

When landmark trees are permitted to be removed, replacement trees shall be provided to a minimum of 50 percent of the diameter at breast height of the tree to be removed. Replacement trees shall be provided either individually or on an accumulative basis to meet the 50 percent diameter-at-breast-height requirement.

(Code 1976, § 4-12.15.03)

Secs. 126-464--126-490. Reserved.



- (3) Existing and proposed building placement.
- (4) Building heights.
- (5) Adjacent land uses.
- (6) Distance between land uses.
- (7) Dimensional conditions unique to the parcel.
- (8) Traffic sight distances.

Section 16.03 Tree Preservation and Replacement

(a) **Intent.** It is the intent of this section to promote an increased quality of life through the protection of trees, to provide for their replacement, where necessary, and to provide for the improvement of the quality of the replaced trees over time.

(b) **Tree Removal Permit**

(1) **Required**

- a. The removal or relocation of any tree with a diameter at breast height (DBH) of six (6) inches or greater on any property without first obtaining a tree removal permit shall be prohibited.
- b. The removal, damage or destruction of any landmark tree without first obtaining a tree removal permit is prohibited.
- c. The removal, damage or destruction of any tree located within a forest without first obtaining a tree removal permit is prohibited.
- d. Clear cutting or grubbing within the drip line of a forest without first obtaining a tree removal permit is prohibited.

(2) **Exemptions**

- a. All agricultural/farming operations, commercial nursery/tree farm operations and occupied lots of less than two (2) acres in size, including utility companies and public tree trimming agencies shall be exempt from all permit requirements of this section.
- b. Diseased and dying Ash Trees shall be exempt from all permit requirements of this section.

(3) **Display.** Tree removal permits shall be continuously displayed for the entire period which the trees are being removed.

(4) **Application.** Permits shall be obtained by submitting a tree removal permit application in a form provided by the Development Services Department, which will include the following information:

- a. The owner and/or occupant of the land on which the tree is located.
 - b. The legal description of the property on which the tree is located.
 - c. A description of each tree to be removed, including diseased or damaged trees, and the location thereof.
 - d. A general description of the affected area after the proposed tree removal.
- (5) **Review Procedures.** The Development Services Department shall review the applications for tree removal permits and may impose such conditions on the manner and extent of the proposed activity as are necessary to ensure that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment or interference with natural resources and natural processes within the affected area.
- (6) **Review Standards.** The following standards shall be used to review the applications for tree removal permits:
- a. The protection and conservation of healthy, landmark and high quality trees from pollution, impairment or destruction is of paramount concern.
 - b. The tree shall be evaluated for effect on the quality of the area of location, including tree species, habitat quality, health and vigor of tree, tree size and density. Consideration must be given to scenic assets, wind blocks and noise buffers.
 - c. The trees and surrounding area shall be evaluated for the quality of the involved area by considering the following:
 1. Soil quality as related to potential tree disruption.
 2. Habitat quality.
 3. Tree species (including diversity of tree species).
 4. Tree size and density.
 5. Health and vigor of tree stand.
 6. Understory species and quality.
 7. Other factors such as value of the trees as an environmental asset (i.e., cooling effect, etc.)
 - d. The removal or relocation of trees within the affected areas shall be limited to instances:
 1. Where necessary for the location of a structure or site improvement and when no reasonable or prudent alternative location for such structure or improvement can be had without causing undue hardship.
 2. Where the tree is dead, diseased, injured and in danger of falling too close to proposed or existing structures, or interferes with existing utility service, interferes with safe vision clearances or conflicts with other ordinances or regulations.
 3. Where removal or relocation of the tree is consistent with good forestry practices or if it will enhance the health of remaining trees.
 - e. The burden of demonstrating that no feasible or prudent alternative location or improvement without undue hardship shall be upon the applicant.

(7) Landmark Trees

Common Name	Species	DBH
Arborvitae	<i>Thuja occidentalis</i>	18 in.
American Basswood	<i>Tilia Americana</i>	18 in.
American Beech	<i>Fagus grandifolia</i>	18 in.
American Chestnut (non-nut bearing)	<i>Castanea</i>	8 in.
Birch	<i>Betula spp.</i>	18 in.
Black Alder	<i>Alnus glutinosa</i>	12 in.
Black Tupelo	<i>Nyssa sylvatica</i>	12 in.
Black Walnut	<i>Juglans nigra</i>	20 in.
White Walnut	<i>Juglans cinerea</i>	20 in.
Buckeye (Horse Chestnut) (non-nut bearing)	<i>Aesculus spp.</i>	18 in.
Cedar, Red	<i>Juniperus spp.</i>	12 in.
Crabapple (cultivar)	<i>Malus spp.</i>	12 in.
Douglas Fir	<i>Pseudotsuga menziesii</i>	18 in.
Eastern Hemlock	<i>Tsuga Canadensis</i>	12 in.
Flowering Dogwood	<i>Cornus florida</i>	8 in.
Ginkgo	<i>Ginkgo biloba</i>	18 in.
Hickory	<i>Carya spp.</i>	18 in.
Kentucky Coffeetree	<i>Gymnocladus dioicus</i>	18 in.
Larch/tamarack	<i>Larix laricina (Eastern)</i>	12 in.
Locust	<i>Gleditsia triacanthos</i>	24 in.
London Planetree	<i>Platanus spp.</i>	18 in.
Maple	<i>Acer spp. (except negundo)</i>	18 in.
Oak	<i>Quercus spp.</i>	20 in.
Pine	<i>Pinus spp.</i>	18 in.
Sassafras	<i>Sassafras albidum</i>	15 in.
Spruce	<i>Picea spp.</i>	18 in.
Tuliptree	<i>Liriodendron tulipifera</i>	18 in.
Wild Cherry	<i>Prunus spp.</i>	18 in.

(c) **Protective Barriers.** It shall be unlawful to develop, clear, fill or commence any activity for which a use permit is required in or around a landmark/historic tree or forest without first erecting a continuous protective barrier around the perimeter drip line, per *Section 16.02(f)(3)*.

(d) Relocation or Replacement

(1) **Landmark Tree Replacement.** Whenever a tree removal permit is issued for the removal of any landmark tree with a DBH of six (6) inches or greater, such trees shall be relocated or replaced by the permit grantee. Every landmark/historic tree that is removed shall be replaced by three (3) trees with a minimum DBH of four (4) inches. Such trees will be of the species from *Table 16.02.o.1*.

(2) **Replacement of other Trees.** Whenever a tree removal permit is issued for the removal of trees, other than landmark/historic trees, with a DBH of six (6) inches or greater, such trees shall be relocated or replaced by the permit grantee if more than twenty percent (20%) of the total drip line area is removed. Tree replacement shall be done in accordance with the following:

- a. If the replacement trees are of at least two (2) inches in DBH, but less than three (3) inches in DBH, the permit grantee shall be given credit for replacing one (1) tree.
 - b. If the replacement trees are of at least three (3) inches in DBH, but less than four (4) inches in DBH, the permit grantee shall be given credit for replacing one and a half (1½) trees.
 - c. If the replacement trees are of at least four (4) inches in DBH, the permit grantee shall be given credit for replacing two (2) trees.
- (3) **Exemptions.** All agricultural/farming operations, commercial nursery/tree farm operations and occupied lots of less than two (2) acres shall not be required to replace or relocate removed trees.
- (4) **Replacement Tree Standards.** All replacement trees shall:
- a. Meet both the American Association of Nurserymen Standards (AANS) and the requirements of the state department of agriculture.
 - b. Be nursery grown.
 - c. Be guaranteed for two (2) years, including labor to remove and dispose of dead material. The City may request performance guarantees in accordance with *Section 25.08 Performance Guarantees*.
 - d. Be replaced immediately after removal of the dead tree, in accordance with AANS.
 - e. Be of the same species as the removed trees. When replacement trees of the same species are not available from Michigan nurseries or a removed tree type is considered to be undesirable, the applicant may substitute any species listed in *Table 16.02.o.1*, provided that shade trees are substituted with shade trees.
 - f. Ornamental trees need not necessarily be replaced with ornamental trees, but this shall be encouraged where feasible.
 - g. Be located on the same parcel of land on which the activity is to be conducted. Where tree relocation or replacement is not possible on the same property on which the activity is to be conducted, the permit grantee shall pay monies into the City tree fund for tree replacement within the City, at the time a permit is applied for.

(e) Tree Replacement Fund

- (1) The City tree replacement fund is intended to provide for the off site replacement of trees, to compensate for the loss of trees due to development, construction and inadequate safeguards during construction.
- (2) This fund is to be used for the planting of trees in areas to be determined by the City, for public areas.
- (3) Tree replacement shall be valued per inch for each inch over six (6) inches times the number of trees lost. The per inch fee shall be set by City Council by resolution.

- (f) **Violation.** If a violation of this section is noted, the Development Services Department will notify the owner of record and the occupant of the property of the violation. Such notice shall specify the violation and the time within which corrective action must be completed. This notice may be served personally or by mail. If the property is not in compliance with this section at the end of the period specified in the notice of violation, an appearance ticket may be issued.

Section 16.04 Sidewalks

- (a) **Intent.** The purpose of this section is to enhance the health, safety and welfare of the public by the development of a comprehensive non-motorized system to allow for improved access and recreation opportunities.
- (b) **Sidewalks.** Sidewalks shall be required along both sides of all streets of all subdivision plats, condominiums, and multiple-family developments. Sidewalks shall also be required for all uses along all major street frontages as defined in *Section 28.11(k) Streets*.
- (c) **Other Locations.** Sidewalks may be required in other locations as part of site plan review where the planning commission determines that they are needed for pedestrian traffic or safety.
- (d) **Open Space Paths.** The planning commission may require walking trails within open space areas of residential developments. Trails shall be five (5) foot wide asphalt or wooden boardwalks in areas with sensitive environmental features.
- (e) **Location.** Sidewalks shall be installed by the developer one (1) foot within the dedicated street right-of-way, private street access easements or special easement where grades or other factors prevent placement within the right-of-way or access easement. Sidewalks shall be located to align with existing or future sidewalks on adjacent lots.
- (f) **Construction Standards.** All sidewalks shall be concrete, at least five (5) feet wide and constructed to the specifications of the City engineer.
- (g) **Crosswalks.** An inclined approach shall be required where sidewalks intersect curbs for barrier free access to the sidewalk. Crosswalk pavement markings and signs may be required at intersections.
- (h) **Installation of Residential Sidewalks.** Required sidewalks may be installed for a residential lot in a new residential subdivision or condominium after construction of the dwelling unit if the developer has posted a performance guarantee to cover the cost of all sidewalk installation. A certificate of occupancy for the dwelling shall not be issued until the required sidewalk is installed.
- (i) **Performance Guarantees.** The City may request performance guarantees in accordance with *Section 25.08 Performance Guarantees*.

ARTICLE I. IN GENERAL

Sec. 37-1. Findings, purpose.

(a) The city finds that rapid growth, the spread of development, and increasing demands upon natural resources have had the effect of encroaching upon, despoiling, or eliminating many of the trees and other forms of vegetation and natural resources and processes associated therewith which if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreation and economic assets to existing and future residents of the city. Specifically, the city finds that:

- (1) Woodland growth protects public health through the absorption of air pollutants and contamination, through buffering in the reduction of excessive noise, wind, storms and visual screening, and through its cooling effect in the summer months;
- (2) Woodlands provide for public safety through the prevention of erosion, siltation, and flooding;
- (3) Trees and woodland growth are an essential component of the general welfare of the city by maintaining natural beauty, recreation, and an irreplaceable heritage for existing and future city residents; and
- (4) The protection of such natural resources is a matter of paramount public concern, as provided by Article IV, Section 52 of the Constitution of 1963, and the Natural Resources and Environmental Protection Act of 1994, Act No. 451 of the Public Acts of Michigan of 1994 (MCL 324.101 et seq.), as amended.

(b) Therefore, the purposes of this chapter are to:

- (1) Provide for the protection, preservation, replacement, proper maintenance and use of trees and woodlands located in the city in order to minimize disturbance to them and to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or from the destruction of the natural habitat. In this regard, it is the intent of this chapter to protect the integrity of woodland areas as a whole, in recognition that woodlands serve as part of an ecosystem, and to place priority on the preservation of woodlands, trees, similar woody vegetation, and related natural resources over development when there are no location alternatives.
- (2) Protect the woodlands, including trees and other forms of vegetation, of the city for their economic support of local property values when allowed to remain uncleared and/or unharvested and for their natural beauty, wilderness character of geological, ecological, or historical significance; and
- (3) Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of the city.

(Ord. No. 86-125.02, § 2.01, 12-15-86; Ord. No. 88-125.04, Pt. 1, 8-8-88; Ord. No. 97-160, Pt. XXV, 4-7-97)

Sec. 37-2. Definitions.

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

Agricultural activity means the production of plants and animals useful to humans, including forages and sod crops, feed crops, field crops; dairy and dairy products;

poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

Agricultural activity includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural activity does not include the management and harvesting of a woodlot.

Bona fide farming means the undertaking of good faith agricultural activity on land. In determining whether the activity occurring on land is bona fide, the following criteria shall be considered:

- (1) The length of time the land has been so utilized;
- (2) Whether the use has been continuous;
- (3) The size of the operation, as it relates to and as appropriate for the specific alleged agricultural activity;
- (4) Whether apparent effort has been made to care sufficiently and adequately for the land in accordance with generally accepted agricultural and management practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, etc.;
- (5) Whether the land is under lease for the conduct of the activity and, if so, the length, terms, and conditions of the lease; and
- (6) The agricultural activity must be a permitted (or approved conditional) or accessory use as set forth in the zoning ordinance.

Commercial farming means a farming operation designed to generate income to the owner, reported for tax purposes on an annual basis, from the agricultural.

Building area means a designated outline of an area of permitted woodland encroachment for construction of a single-family residence. The building area shall include sufficient area for a residence, plus fifteen (15) feet around the residence for construction purposes. Building areas shall be located by depicting perpendicular distances to corresponding front, side and rear lot lines. In addition, perpendicular distances to regulated woodlands boundaries from the corners of such buildings areas shall be depicted.

Commercial nursery, tree farm means a licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and growing for sale or intended sale to the general public in the ordinary course of the licensee's business.

Damaged tree means a tree that is injured so that it is not a viable tree or may cause harm. Any tree with greater than seventy-five (75) percent of its canopy intact shall be considered viable and healthy. This determination shall be made during the regular growing season.

Dead tree means a tree having no more than zero (0) to fifteen (15) percent of the canopy with leaves. This determination shall be made during the regular growing season.

Development includes any lawful land use authorized under Appendix A, "Zoning Ordinance," as amended.

Diameter breast height (d.b.h.) means the diameter in inches of a tree measured at four and one-half (4 1/2) feet above the existing grade.

Diseased tree means a tree that has been determined to have a terminal disease such as, but not limited to, Dutch Elm disease or Oak Wilt. Said disease must be confirmed

by the Michigan State Cooperative Extension Service Plant and Pest Diagnostic Clinic at Michigan State University or an equivalent laboratory.

Drip line means an imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

Farm means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

Farm operation means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- (1) Marketing produce at roadside stands or farm markets.
- (2) The generation of noise, odors, dust, fumes, and other associated conditions.
- (3) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- (4) Field preparation and ground and aerial seeding and spraying.
- (5) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- (6) Use of alternative pest management techniques.
- (7) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- (8) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- (9) The conversion from a farm operation activity to other farm operation activities.
- (10) The employment and use of labor.

Farm product means those plants and animals useful to human beings produced by agricultural activity and includes, but it is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber or, fir, as determined by the Michigan Commission of Agriculture.

Groundcover means low-growing shrubs, woody vegetation, wild flowers and other small herbaceous plants within a woodland area.

Grubbing means the effective removal of understory vegetation, groundcover, shrubs or trees. In those instances when grubbing is permitted it shall not include the removal of any trees with a d.b.h. of greater than three (3) inches.

Historic tree means a tree which, pursuant to section 37-6.5, has been designated by the planning commission to be of notable historic interest to the city because of its age, type, size or historic association.

Land clearing means those operations where trees and vegetation are removed and which occur previous to construction of a building; e.g., road right-of-way excavation and paving, lake and drainage system excavation, utility excavation, grubbing, and any other necessary clearing operations.

Locate means construct, place, insert or excavate.

Material includes soil, sand, gravel, clay, peat, mud, debris and refuse, or any other material organic or inorganic.

"No tree" verification means a signed, notarized statement by the owner or agent stating that no trees exist upon the site of eight-inch d.b.h. or greater.

Nonhuman cause means a natural result proceeding from physical causes done without the intervention of humans, such as, insect infestation, diseases or acts of God (an act occasioned exclusively by violence of nature without the interference of any human agency).

Operations includes the locating, moving or depositing of any material, or any construction use or activity, or a combination thereof which in any way modifies the conditions of lands subject to this chapter.

Owner means any person who has dominion over, control of, or title to woodlands.

Person includes any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the city and all tree removal companies and persons removing trees on behalf of others.

Planning commission means the planning commission organized under Article II of Chapter 27.

Protective barrier means a physical structure limiting access to a protected area, composed of wood or other suitable materials which ensures compliance with the intent of this chapter. Variations of these methods may be permitted upon written request if they satisfy the intent of this chapter.

Remove, removal includes the cutting of trees and the injury and/or destruction of any form of vegetation, by whatever method, on any lands subject to this chapter.

Specimen tree means a tree which, pursuant to section 37-6.5, has been designated as a specimen tree by the planning commission because of its high value as a representative tree of a particular type or species, due to its size, age or other prominent characteristic.

Structure means any assembly of materials above or below the surface of the land or water, including but not limited to houses, buildings, bulkheads, piers, docks, landings, dams, waterway obstructions, towers, utility transmission devices.

Transplant means the digging up by a property owner of a tree from one place on a property and the planting of the same tree in another place on the same property.

Tree means a woody plant with an erect perennial trunk, which at maturity is thirteen (13) feet or more in height and which has a more or less definite crown of foliage.

Woodland areas means all lands (including all trees, shrubs and ground cover thereon regardless of size) which are subject to this chapter under section 37-4 as designated in the official woodlands map.

(Ord. No. 86-125.02, § 3.01, 12-15-86; Ord. No. 88-125.04, Pts. II--VI, 8-8-88; Ord. No. 98-125.11, Pt. I, 2-9-98; Ord. No. 2000-125.13, Pts. I--IV, 2-28-00; Ord. No. 04-125.18, § 1, 7-26-04)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 37-3. Interpretation and application.

In the interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience, or general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to activities within woodlands areas; provided, however, that where this chapter imposes a greater restriction than is required by existing ordinances or by rules, regulations or permits the provisions of this chapter shall control.

(Ord. No. 86-125.02, § 15.01, 12-15-86)

Sec. 37-4. Applicability.

(a) This chapter shall apply to all lands depicted on the official woodlands map as light ("L") woodlands, medium ("M") woodlands or dense ("D") woodlands.

(b) This chapter shall further apply for the protection of any individual tree with a d.b.h. of thirty-six (36) inches or greater, irrespective of whether such tree is within an area described in subsection (a) above. A woodlands use permit shall be required under section 37-26 before the conduct of any activity which has the effect of removing, damaging or destroying a tree with a d.b.h. of thirty-six (36) inches or greater.

(c) Where uncertainty exists with respect to the boundaries of designated woodland areas shown on the official woodlands map, the following rules shall apply:

(1) Distances not specifically indicated on the map shall be determined by the scale on the map;

(2) Where physical or natural features existing on the ground are at variance with those shown on the official woodlands map, or in other circumstances where uncertainty exists, the body or official reviewing the activity in question shall interpret the woodland area boundaries.

(d) Where there is uncertainty as to whether this chapter requires a woodlands use permit for proposed activities on a given parcel of land, the owner or developer may provide the city with an affidavit, in form approved by the city, indicating that this chapter does not apply to the parcel. Upon verification by the city, the owner or developer shall be relieved of the necessity of submitting a woodlands use permit application.

(Ord. No. 86-125.02, § 4.01, 12-15-86; Ord. No. 87-125.03, Pt. I, 6-1-87; Ord. No. 88-125.04, Pt. VI, 8-8-88)

Sec. 37-5. Enforcement.

(a) Any person, firm or corporation determined to have been in violation of the provisions of this article shall be responsible for a municipal civil infraction and subject to the provisions of section 1-11 of this Code.

(b) In addition to the penalties provided for in section 1-11, any person who violates any provision of this chapter shall forfeit and pay to the city a civil penalty equal to the total value of those trees illegally removed or damaged, as computed from the International Society of Arboriculture shade tree value formula. Such sum shall accrue

to the city and may be recovered in a civil action brought by the city. Such sum so collected shall be placed in the city tree fund. Replacement of illegally removed trees may be required as restoration in lieu of money. This replacement will be computed on an inch-for-inch ratio based on the total diameter measured at d.b.h. in inches of the illegally removed trees. If, because of destruction of the removed trees, exact inch-for-inch measurements cannot be obtained, the city may use other means to estimate the tree loss. A combination of money and tree replacement may be required.

(c) Any use or activity in violation of the terms of this chapter is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The council, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator.

(d) If activities are conducted in a woodlands area contrary to the use permit required by this chapter or other applicable laws or ordinances, the department of building and safety shall give written notice to the permit grantee, or if a permit has not been issued then to the person conducting the activity, notifying him of the violation of the permit, this chapter, or other applicable law or ordinance, and to appear and show cause why the activity should not be stopped. If the permit grantee or the person conducting the activity fails to appear and show good cause within one (1) full workday after notice is delivered, the department of building and safety shall cause a written order to stop the activity to be posted on the premises. A person shall not continue, or cause or allow to be continued, activity in violation of such an order, except with permission of the enforcing agency to abate a dangerous condition or remove the violation, or except by court order. If an order to stop is not obeyed, the enforcing agency may apply to the circuit court for the county in joining the violation of the order. This remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, including the issuance of a municipal civil infraction for the failure to obey the order.

(e) Any person violating the provisions of this chapter shall be come liable to the city for any expense or loss or damage occasioned by the city by reason of such violation. (Ord. No. 86-125.02, § 16.01, 12-15-86; Ord. No. 03-172, Pt. XIV, 10-20-03)

Sec. 37-6. Official woodlands map.

(a) The designated woodlands areas are hereby established as shown on the official woodlands map which is on file in the office of the city clerk and which with all notations, references, and the information shown thereon, shall be as much a part of this chapter as if fully described in this section. If because of problems with scale or detail there is any ambiguity as to whether a particular area is a part of a woodlands, that determination shall be made by the body or official reviewing the use or activity for that area. The map shall include the location of designated historical and specimen trees.

(b) The council may revise the official woodland area map at any time that new and substantial data for woodlands and historic trees are available. Where the official woodlands map is amended to add an individual property or several adjacent properties as designated woodlands, notice of the proposed amendment and hearing shall be given to all owners of such property at least fifteen (15) days before the hearing.

(Ord. No. 86-125.02, § 4.02, 12-15-86)

Sec. 37-6.5. Historic and specimen trees.

(a) A person may nominate a tree within the city for designation as a historic or specimen tree based upon its age, type, size or historical or cultural associations. Such a nomination shall be made upon that form provided by the planning department.

(b) A nomination for designation of a historic or specimen tree shall be brought on for consideration by the planning commission. Where the nomination is not made by the owner of the property where the tree is located, the owner shall be notified in writing at least fifteen (15) days in advance of the time, date and place that the planning commission will consider the designation. The notice shall advise the owner that the designation of the tree as a historic or specimen tree will make it unlawful to remove, damage or destroy the tree absent the granting of a woodlands use permit by the city. The notice shall further advise the owner that if he objects to the tree designation the planning commission shall refuse to so designate the tree.

(c) Absent objection by the owner, the planning commission may designate a tree as a historic tree upon a finding that because of one (1) or more of the following unique characteristics the tree should be preserved as a historic tree:

(1) The tree is associated with a notable person or historic figure;

(2) The tree is associated with the history or development of the nation, the state or the city;

(3) The tree is associated with an eminent educator or education institution;

(4) The tree is associated with art, literature, law, music, science or cultural life;

(5) The tree is associated with early forestry or conservation;

(6) The tree is associated with American Indian history, legend or lore.

(d) Absent objection by the owner, the planning commission may designate a tree as a specimen tree upon a finding that because of one (1) or more of the following unique characteristics the tree should be preserved as a specimen tree:

(1) The tree is the predominant tree within a distinct scenic or aesthetically-valued setting;

(2) The tree is of unusual age or size (at least thirty-six-inch d.b.h.). Examples include those trees listed on the American Association Social Register of Big Trees, or by the Michigan Botanical Club as a Michigan Big Tree;

(3) The tree has gained prominence due to unusual form or botanical characteristics.

(e) Any tree designated by the planning commission as a historical or specimen tree shall be so depicted on the woodlands map.

(Ord. No. 86-125.02, § 4.03, 12-15-86)

Sec. 37-7. Property inspection.

The city, its officials, agents and employees may make reasonable entry upon any lands or waters within the city for the purpose of enforcement of this chapter or the conduct of any investigation, survey or study contemplated by this chapter.

(Ord. No. 86-125.02, § 5.01, 12-15-86)

Sec. 37-8. Relocation or replacement of trees.

(a) Whenever a use permit allows the removal of trees eight-inch d.b.h. or greater, such trees shall be relocated or replaced by the permit grantee. All replacement trees

shall be two and one-half (2 1/2) inches caliper or greater. Tree replacement shall be at the following ratio:

TABLE INSET:

Removed Tree d.b.h. (In Inches)	Ratio Replacement/ Removed Trees
8 <= 11	1
> 11 <= 20	2
> 20	3

(b) All replacement trees shall satisfy American Association of Nurseryman standards, and be:

- (1) Nursery grown;
- (2) State department of agriculture inspected;
- (3) Tree spade transplanted while in the dormant state, or, if not in the dormant state, having been balled and burlapped with a solid well-laced root ball when in the dormant state;
- (4) No. 1 grade, with a straight unscarred trunk and a well-developed uniform crown (park grade trees are unacceptable);
- (5) Staked, watered and mulched in accordance with Section 2509 of Appendix A, "Zoning Ordinance" (stakes shall be removed after one (1) year);
- (6) Guaranteed for two (2) years, including labor to remove and dispose of dead material;
- (7) Planted in accordance with the City of Novi Tree Planting Detail, and approved through inspection by the city.
- (8) Of the same species as the removed tree where available from Michigan nurseries. Where trees of the same species are not available, replacement shall be pursuant to the replacement chart appended to Ordinance Number 98-125.11, on file in the office of the city clerk. The city can deny the use of certain trees based upon disease or insect susceptibility or the growing conditions on the site. Further, the city can determine the number of different tree species in a planting.

Replacement Chart

TABLE INSET:

Common Name	Botanical Name
Beech	Fagus
Sugar Maple	Acer saccharum
Swamp White Oak (wet)	Quercus bicolor
Shingle Oak	Quercus imbricaria
Scarlet Oak	Quercus coccinea
Chinkapin Oak	Quercus muehlenbergii

Chestnut Oak	<i>Quercus prinus</i>
Red Oak	<i>Quercus rubra</i>
White Oak	<i>Quercus alba</i>
Burr Oak	<i>Quercus macrocarpa</i>
Black Oak	<i>Quercus velutina</i>
Walnut	<i>Juglans</i>
Shagbark Hickory	<i>Carya ovata</i>
Pignut Hickory	<i>Carya glabra</i>
Bitternut Hickory	<i>Carya cordiformis</i>
Horse Chestnut	<i>Aescubus hippocastanum</i>
Sweetgum (wet)	<i>Liquidambar styraciflua</i>
White Pine (2 for 1)(7')	<i>Pinus strobus</i>
Hemlock (2 for 1)(7')	<i>Tsuga canadensis</i>
White Spruce (2 for 1)(7')	<i>Picea glauca</i>
Black Spruce (2 for 1)(7')	<i>Picea mariana</i>
Ginkgo	<i>Gingko biloba</i>
Japanese Zelkova	<i>Zelkova serrata</i>
Bald Cypress	<i>Taxodium distichum</i>
Littleleaf Linden	<i>Tilia cordata</i>
English Oak	<i>Quercus robur</i>
Yellowwood	<i>Cladrastis lutea</i>
River Birch (for Paperbark)	<i>Betula nigra</i>
White Ash	<i>Fraxinus americana</i>
Red Maple (wet)	<i>Acer rubrum</i>
American Basswood	<i>Tilia americana</i>
American Sycamore	<i>Platanus occidentalis</i>
Tupelo	<i>Nyssa sylvatica</i>
Tuliptree	<i>Liriodendron tulipifera</i>
Thornless Honeylocust	<i>Gleditsia triacanthos inermis</i>
American Hornbeam	<i>Carpinus caroliniana</i>

American Hophornbeam	<i>Ostrya virginiana</i>
Eastern Larch (wet and acid)	<i>Larix laricina</i>

(c) The location of replacement trees shall be subject to the approval of the city and shall be such as to provide the optimum enhancement, preservation and protection of woodland areas. Where woodland densities permit, tree relocation or replacement shall be within the same woodland areas as the removed trees. Such woodland replanting shall not be used for the landscaping requirements of the subdivision ordinance or the zoning landscaping, section 2509.

(d) When the proposed tree to be removed has multiple stems, each stem that is eight-inch d.b.h. or greater shall be calculated independently for its replacement value. For example, a tree that has three (3) stems of eight (8) inches, fourteen (14) inches, and sixteen (16) inches, shall require a total of five (5) replacement trees (1, 2, and 2 respectively).

(e) Where tree relocation or replacement is not feasible within the woodland area, the relocation or replacement may be elsewhere on the property where the proposed activity is to be conducted.

(f) Where tree relocation or replacement is not feasible either within the woodland area or elsewhere on the property where the activity is to be conducted, the relocation or replacement may be made at another location within the city approved by the city forester.

(g) Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the city forester, the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required. The city tree account shall be utilized for the planting of trees within the city.

(Ord. No. 86-125.02, § 11.01, 12-15-86; Ord. No. 88-125.04, Pt. VIII, 8-8-88; Ord. No. 93-125.07, Pt. III, 2-1-93; Ord. No. 94-125.08, Pt. I, 3-7-94; Ord. No. 95-125.09, Pt. I, 9-11-95; Ord. No. 98-125.11, Pts. II, III, 2-9-98; Ord. No. 04-125.18, § 2, 7-26-04)

Sec. 37-9. Tree protection during construction.

(a) Before development, land clearing, filling or any land alteration for which a use permit is required by this chapter commences, the developer shall be required to erect for the protection of remaining trees barriers as approved by the city. Such protection shall be maintained and remain in its approved location until such time as it is authorized to be removed by the city or issuance of a final certificate of occupancy. The location of such barriers from protected trees shall be the same separation as is required for trench excavation pursuant to section 11-50 of this Code. During construction, no attachments or wires shall be attached to any of such trees so protected. The construction of barriers shall comply with the following:

(1) Woodland areas shall be separated from construction areas by the installation of "barrier" fencing either of plastic or wood slat materials, a copy of the fence detail is available from the city forester. These materials shall be attached to five-foot "T" poles spaced at five-foot intervals. The use of chain link fence may also be required by the

planning commission in the case of specimen trees or exceptionally valuable woodland or wetland areas.

(2) If a woodland area is required to be fenced off, and the fence has been taken down without permission, or a violation of the fence area has been documented by a notice of violation by the city forester or his representative, and the department of public works has re-erected the normal protective fencing twice, the developer or builder shall be required to install the Michigan State University standard fence detail, a copy of which is available from the city forester.

Barriers will be required for all trees being protected, except in large property areas separate from the construction or land clearing area into which no equipment will venture may be ribboned off by placing stakes a maximum of fifty (50) feet apart and typing ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.

(b) It shall be unlawful for any person to conduct any activity within the drip line of any tree designated to be retained, including but not limited to the placing of any solvents, material, construction machinery, or soil within the drip line.

(c) The city forester, or his designee, shall make a determination as to those trees which can reasonably be expected to survive the permitted activity. Particular consideration shall be given to the impact of changes in grade, deposition of storm water, duration of storm water encroachment, oil leaks, species of the impacted trees, soil types, soil compaction, the distance of earth moving activities from individual trees, and other construction or developmental activities which impact the area around the trees, irrespective of whether the activity is in the immediate vicinity of the affected trees. Trees which cannot be reasonably expected to survive shall be removed. Those trees which are removed pursuant to this section shall be considered in the calculation of replacement trees under section 37-8.

(Ord. No. 86-125.02, § 12.01, 12-15-86; Ord. No. 93-125.07, Pt. IV, 2-1-93; Ord. No. 98-125.11, Pt. IV, 2-9-98)

Sec. 37-10. Taking property without compensation.

(a) This chapter shall not be construed to abrogate rights or authority otherwise provided by law.

(b) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and has been denied a permit or has been made subject to modifications or conditions in the permit under this chapter may file an action in a court of competent jurisdiction.

(c) If the court determines that an action of the city pursuant to this chapter constitutes a taking of the property of a person, then the court shall order the city, at the city's option, to do one (1) or more of the following:

(1) Compensate the property owner for the full amount of the lost value;

(2) Purchase the property in the public interest as determined before its value was affected by this chapter;

(3) Modify its action with respect to the property so as to minimize the detrimental effect to the property's value; and

(4) Modify its action with respect to the property so that the action will not constitute a taking of the property.

(Ord. No. 86-125.02, § 14.01, 12-15-86)
Secs. 37-11--37-25. Reserved.

ARTICLE II. PERMIT

Sec. 37-26. Required.

(a) Except for those activities expressly permitted by section 37-27, it shall be unlawful for any person to conduct any activity within a woodlands area without first having obtained a use permit upon proper application including the following activities:

- (1) Removing, damaging or destroying any tree or similar woody vegetation of any d.b.h. A woodlands area that is also within a wetland or watercourse regulated by Article V of Chapter 12 shall not be exempt from the requirements of this chapter;
- (2) Removing, damaging or destroying any historic or specimen tree; and
- (3) Land clearing or grubbing.
- (4) Conversion of a farm operation use to a non-farm operation use without the restoration of the affected woodlands area on the property pursuant to subsection 37-8(b).

(b) Where a final subdivision plat or a final site development plan which includes activities regulated by this chapter has been reviewed and approved by the city in conformance with the requirements of this chapter, such approval together with any additional terms and conditions attached thereto shall be considered to have completed the requirements for a permit under this chapter which shall then be issued by the city.

(c) Unless the requirements of this chapter can be satisfied by the setting aside without encroachment of sufficient woodland areas, the developer of a single-family residential subdivision plat or single-family residential site condominium shall, as a part of use permit approval under this article, designate building areas for all structures on each subdivision lot or site condominium unit. Once such building areas have been approved and made a part of the use permit, no additional woodlands use permit shall be required for the erection of structures within such a building area. Activities on a subdivision lot or site condominium unit that extend beyond the confines of such a designated building area shall require an additional approval pursuant to this chapter, which shall only be approved when it is not otherwise feasible to utilize the lot or site condominium unit for single-family residential purposes. Whenever a building permit is granted for construction of a single-family residence the permit holder shall post a performance guarantee to ensure continued compliance with the use permit granted with the platting of the subdivision or approval of the site condominium. The form of the guarantee shall be in accordance with the provisions of chapter 26.5. The amount of the guarantee shall be based upon a pro rata share of the performance guarantee posted by the subdivision or site condominium developer under subsection 37-30(e)(3). With each such posting, the developer may apply for a corresponding reduction (or return) of the original performance guarantee posted by the developer under subsection 37-30(e)(3).

(Ord. No. 86-125.02, § 6.01, 12-15-86; Ord. No. 88-125.04, Pts. IX, X, 8-8-88; Ord. No. 98-125.11, Pt. V, 2-9-98; Ord. No. 04-125.18, § 3, 7-26-04; Ord. No. 04-125.19, § 1, 9-13-04)

Sec. 37-27. Exceptions.

Notwithstanding the prohibition of section 37-26, the following activities are permitted within woodlands areas without a use permit, unless otherwise prohibited by statute or ordinance:

- (1) The transplanting within a twelve-month period of no more than three (3) trees on a given parcel of land within a designated woodlands area;
- (2) The removal within a twelve-month period of a single tree with a d.b.h. of less than eight (8) inches where a valid certificate of occupancy has been issued;

(3) The removal or trimming of dead, diseased or damaged trees or other woody vegetation, provided that the damage resulted from a nonhuman cause, and provided further that the removal or trimming is accomplished through the use of standard forestry practices and techniques;

(4) Conservation of soil, vegetation, water, fish, wildlife and other natural resources;

(5) Outdoor recreation, such as the utilization of field trails or woodlands for nature study, hiking, horseback riding, trapping and hunting as otherwise legally permitted and regulated. The exception for outdoor recreation shall include the development of land for recreational uses;

(6) Bona fide farming, where the farm operation is registered with the city pursuant to Chapter 8 of this Code, and forestry and nursery practices, where otherwise legally permitted, and where compatible with the individual woodland ecology and not in conflict with the standards contained in section 37-29 provided that a forest management use permit is obtained pursuant to subsection 37-8(d) for forestry activities within a woodlands area;

(7) The operation and maintenance of existing dams and other water control devices if in compliance with all applicable statutes and ordinances; and

(8) Actions taken in times of emergency, including the repair or restoration of public roads, electrical lines, natural gas lines, water lines, sewage lines and storm drainage systems, when immediate action is necessary to protect public health or safety or to prevent damage to property. A person taking such emergency actions shall within fourteen (14) days thereof provide a report to the planning commission describing the actions taken, the nature of the emergency necessitating the actions, and the extent of any cutting or removal of, or damage to, any trees within the woodlands area. The matter shall be reviewed by the city forester, or his designee, who shall make a determination as to whether the resulting tree cutting, removal or damage was reasonably necessitated by the emergency situation. To the extent the resulting tree cutting, removal or damage exceeds that reasonably necessitated by the emergency situation, the person shall be required to provide replacement trees in accordance with the replacement standards of section 37-8.

(9) The cutting, trimming or removal of trees and other woody vegetation in connection with the construction, maintenance or repair of a natural gas transmission main which is located within a private easement of the public utility or within property owned in fee by the public utility, provided the following conditions are met:

a. If the activity is conducted within a private easement, the public utility shall notify the underlying property owner in writing at least fourteen (14) days in advance of the activity, with a copy of the notification forwarded to the city forester;

b. The public utility shall, where possible, protect and maintain historic and specimen trees;

c. If the activity is adjacent to property where there is located a residential dwelling, the public utility shall, where possible, preserve an undisturbed buffer area of vegetation adjacent to such property; and

d. Any area that is cleared shall be cleaned, graded and seeded.

(Ord. No. 86-125.02, § 7.01, 12-15-86; Ord. No. 88-125.04, Pts. XI--XIII, 8-8-88; Ord. No. 93-125.07, Pt. V, 2-1-93; Ord. No. 96-125.10, Pt. I, 4-22-96; Ord. No. 2000-125.13, Pt. V, 2-28-00; Ord. No. 04-125.18, § 3, 7-26-04)

Sec. 37-28. Contents of application.

(a) *Required information.* An applicant for a use permit required by this article shall submit the following materials to the city clerk:

(1) A completed use permit application, on a use form prescribed by the city, which includes the following information:

a. The name, address and telephone number of the applicant and of the applicant's agent.

b. The name, address and telephone number of the owner of the property.

- c. The project location, including as applicable, the street, road or highway, section number, name of subdivision, and name of any watercourse which will or may be impacted.
- d. A detailed description and statement of purpose of the proposed activity.
 - (2) A use permit application fee in an amount as set by resolution of the council;
 - (3) Where the applicant is not the owner of the property, a written authorization from the owner permitting the proposed activity; and
 - (4) A site plan, including topographical survey, sealed by a registered engineer or registered surveyor, which includes the following information:
 - a. The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any;
 - b. Locations based upon actual field survey of all existing trees by estimated number, size and species and of shrubs and ground cover. For woodland areas in which there will be no development, aerial photography interpretation or sampling methods may be used instead of actual field survey;
 - c. For all woodlands in which development is proposed the woodlands plan shall be accompanied by a separate key identifying by location all trees eight (8) inches d.b.h. and greater, by size, common, genus and species names (i.e. Red Maple/Acer rubrum) and condition. Such information shall be provided by a registered landscape architect, certified arborist, or registered forester, through an on-site inspection, who must verify the contents by seal or signature with registration number, whichever applies. For all trees proposed to remain, a topographic elevation at the base of the trunk shall be indicated. All such trees shall be identified in the field by the painting of the identifying numbers in nontoxic paint of a white, yellow or orange color. All trees, shrubs, and groundcover proposed to remain or to be transplanted shall be identified by estimated number, size, and species;
 - d. Existing general soil conditions throughout the parcel;
 - e. A statement showing how trees not proposed for removal are to be protected during land clearing, construction, and on a permanent basis, including the proposed use of protective barriers, tree wells, tunneling or retaining walls. See section 37-9.
 - f. Locations and dimensions of all setbacks, easement and existing and proposed public and private utilities;
 - g. Statements as to proposed grade changes and proposed drainage pattern changes for the lot or parcel, including information as to changes in water levels within protected woodlands. Existing contour data for the entire property with a vertical contour interval of no more than two (2) feet, and vertical contour data at an interval of no more than one (1) foot for all areas to be disturbed by proposed tree removal operations, extending for a distance of at least fifty (50) feet beyond the limits of such areas. Indicated elevations shall be based on United States Geological Survey datum;
 - h. The number of trees to be cut which have a d.b.h. of eight (8) inches or more, plus a plan and cost estimate for their replacement. Final costs for replacement shall be determined by the city forester, or his designee, upon acceptance of final engineering plans by the city;
 - i. Information as to how all trees to be retained shall be identified at the site, whether by painting with water base paint, flagging, etc. prior to field inspection; and
 - j. The legal property description, zoning classification including adjacent parcels, existing structures, the extent of existing woodland areas, and the size and location of all elements of the proposed activity.
- (b) *Alternate site plan information.* Where the proposed activity is located on a site with no trees with a d.b.h. of eight (8) inches or greater, the applicant shall so indicate in his application, and submit a "no tree" affidavit. In such case, the city shall conduct an inspection of the site. If the inspection substantiates the applicant's claim, the applicant shall be relieved of the necessity of providing unnecessary information, such as the topographic survey, etc. However, where there are trees of less than eight-inch d.b.h. that are otherwise potential good specimens

of that particular woodland, additional information will be required such as quality, size, species, health and such additional information as the city may request.

(c) *Land clearing or grubbing.* Where the proposed activity is land clearing or grubbing only the preparation of a site plan which depicts the location of all trees as required by subsection (a)(4)b. shall not be required. However, the applicant shall provide general information as to the number, species and size of the protected trees on the property before a use permit for the clearing or grubbing may be granted.

(d) *Forest management use permit.* An owner may be granted a forest management use permit for the purpose of maintaining and improving a woodlands area by professional forestry management methods. Applications for this permit must be accompanied by a management plan for the subject area prepared by a forester licensed and registered in the state. The management plan shall include a description of and a schedule for the program, justifying reasons for the work specified, and a summary of the benefits to be obtained. Work under a forest management use permit shall be directed by a licensed and registered forester. Under the forest management use permit, provisions of this chapter which are applicable solely to development or land clearing activities shall not apply. The city shall not levy any fee for this special permit.

(e) *De minimis activities.* Where the proposed activities involve the removal or cutting of no more than three (3) trees of eight-inch d.b.h. or greater within a twelve-month period, and are not taken in conjunction with the development of a parcel or erection of structures on a parcel, the city may waive the requirement for a site plan and permit fees, provided the city forester, or his designee, is otherwise able to make a determination that the proposed activity will not adversely impact the woodlands area or violate the criteria of section 37-29.

(Ord. No. 86-125.02, § 8.01, 12-15-86; Ord. No. 88-125.04, Pts. XIV, XV, 8-8-88; Ord. No. 93-125.07, Pt. VI, 2-1-93; Ord. No. 06-125.20, § 1, 10-9-06)

Sec. 37-29. Application review standards.

The following standards shall govern the grant or denial of an application for a use permit required by this article:

(1) No application shall be denied solely on the basis that some trees are growing on the property under consideration. However, the protection and conservation of irreplaceable natural resources from pollution, impairment, or destruction is of paramount concern. Therefore, the preservation of woodlands, trees, similar woody vegetation, and related natural resources shall have priority over development when there are no location alternatives.

(2) The integrity of woodlands areas shall be maintained irrespective of whether such woodlands cross property lines.

(3) The reviewing authority shall evaluate the quality of the involved woodland area, including in its evaluation consideration of:

- a. Soil quality;
- b. Habitat quality;
- c. Tree species (including diversity of tree species);
- d. Tree size and density;
- e. Health and vigor of tree stand;
- f. Wildlife within the woodland area;
- g. Understory species and quality; and
- h. Other factors such as the value of the woodland area as a scenic asset, windblock, noise buffer, environment, asset (i.e.--Cooling effect, etc.), and the value of historic or specimen trees within the woodland area.

(4) The removal or relocation of trees shall be limited to those instances:

- a. When necessary for the location of a structure or site improvements and when no feasible and prudent alternative location for the structure or improvements can be had without causing undue hardship; or
 - b. The tree is dead, diseased, injured and in danger of falling too close to proposed or existing structures, or interferes with existing utility service, interferes with safe vision clearances, or conflicts with other ordinances or regulations.
- (5) Where the removal or cutting of any trees with eight-inch d.b.h. or greater is permitted, replacement trees shall be provided in accordance with section 37-8.
- (6) The proposed activity shall include necessary provisions for tree protection in accordance with section 37-9.
- (7) Where the proposed activity consists of land clearing it shall be limited to designated street rights-of-way, drainage and other utility areas, and areas necessary to the construction of proposed buildings and structures, as depicted on the plat or site plan. Where the proposed activity consists of grubbing, all trees with a d.b.h. of three (3) inches or greater will be left undisturbed. The understory of such trees shall likewise be left undisturbed within the drip line or within an area three (3) feet from the tree, whichever is greater.
- (8) Where the proposed activity includes residential development, residential units shall blend into the natural setting of the landscape for the enhancement of the sound, orderly economic growth and development and for the protection of property values in this city. Naturally occurring runoff may pass from one wooded area to a second area without an easement, provided developed runoff is not directed to such second area. Naturally occurring low areas may remain where no developed runoff is directed to such areas. Buildings within protected woodlands shall have gutters and downspouts which direct developed runoff away from protected woodlands either through the building's storm water discharge system or by weeping tile directing water away from the protected woodland.
- (9) The proposed activity shall be in compliance with all other applicable statutes and ordinances.
- (10) The reviewing authority shall consider the total acreage of woodlands existing within the city.
- (11) The burden of demonstrating that no feasible and prudent alternative location for structures or improvements without undue hardship shall be upon the applicant.
- (Ord. No. 86-125.02, § 10.01, 12-15-86; Ord. No. 88-125.04, Pt. XVI, 8-8-88; Ord. No. 93-125.07, Pts. VII, VIII, 2-1-93)

Sec. 37-30. Application review procedures.

- (a) The city forester, or his designee, shall review the submitted application for a use permit required by this article to ensure that all required information has been provided. At the request of the applicant or the city, an administrative review meeting may be held to review the proposed activity in light of the purpose and review standards of this chapter. A field inspection of the site may be conducted. The city forester, or his designee, shall, after review of the proposed activity, submit a report and recommendations to the planning commission or woodlands review board as to the propriety of the proposed use under the review standards and criteria of section 37-29.
- (b) Where the proposed activity does not otherwise require site plans or plat approval, the granting or denying of the use permit shall be the responsibility of the woodlands review board. The woodlands review board shall be composed of three (3) citizen members, which are three (3) persons appointed by city council who are residents of the city and have the qualifications required by the city's Charter for officers of the city. The members appointed by city council shall serve for terms of two (2) years beginning at noon on January 1 of each even-numbered year. The city council shall appoint three citizen members to the woodlands review board who shall serve from the date of the adoption of this ordinance, or as soon thereafter as practical, to

January 1 of 2006. The granting or denying of all other use permits shall be the responsibility of the planning commission, which shall also have the responsibility to grant or deny permits in the place and stead of the above-described Woodlands Review Board, if at the time an application for a permit hereunder is received and a duly- and fully-constituted Woodlands Review Board is not established. The granting or denying of all permits shall be governed by the review standards contained in section 37-29.

(c) Prior to a determination by the planning commission on a use permit application, notice of the application and the date, time and location of the planning commission meeting at which the application will be considered shall be published in the paper of general circulation within the city. A copy of that notice shall be mailed to those persons to whom real property adjacent to the proposed activity is assessed. Prior to a determination on a use permit application by the woodlands review board, a notice of the pending application shall be published and mailed to those persons to whom real property is assessed (based upon addresses on city assessing records) situated within three hundred (300) feet of the property boundaries of the land for which the permit is proposed. The notice shall indicate a date prior to which written comments regarding the application may be submitted to the city for consideration by the woodlands review committee.

(d) Whenever a use permit application is denied, the reasons for denial shall be transmitted in writing to the applicant.

(e) Whenever a use permit is granted, the reviewing authority (planning commission or woodlands review board) shall:

(1) Impose such conditions on the manner and extent of the proposed activity or use as are necessary to ensure that the intent of this chapter is carried out and that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment, or interference with natural resources and natural processes within the woodlands area. A condition to every permit shall be that the grantee, by acceptance of the permit, consents to entry onto the premises by representatives of the city and law enforcement officers to inspect the activities conducted pursuant thereto. In those instances where the permit requires the preservation of a woodland area, the grantee shall provide the city a conservation easement for such area in such form as is acceptable to the city engineer and city attorney. Where the activity includes the development of property for single-family residential use, a condition to the permit shall be that the grantee erect and maintain signage on the property indicating areas of protected woodlands. The signage shall be at such locations approved by the city forester, and shall remain until all lots or units adjacent to such woodland areas are constructed upon. The signage shall include the telephone number of the city forester.

(2) Fix a reasonable time within which any woodlands operations must be completed.

a. In general, woodland operations are to be completed in a time period consistent with the provisions of chapter 26.5, particularly section 26.5-5(c).

b. If compliance with this chapter will include an obligation to replant two thousand (2,000) trees or more, as calculated under section 37-8, the city council, following review and recommendation by the reviewing authority, may allow an extended period, not to exceed ten (10) years, for the completion of any portion of the replanting requirement to be undertaken off the site of the land which is the subject matter of the permit. If an extension is granted under this subparagraph, the total replanting requirement shall be satisfied, and shall be carried out in equal annual installments during each year of the extension. The first planting year-installment shall be identified in the approval. The precise number of years allowed for the completion of replanting shall be determined based upon a demonstration by the applicant that, unless an extension for the requested period of time is granted, the applicant shall be impaired from carrying out the activity for which the land is being developed. If the replanting period approved by the city will extend over a period of five (5) years or more, the applicant may propose, and the city council may approve, a form of security other than the mechanisms specified in the

following subsection (3), provided, as a condition to approving such alternate form of security, the applicant must demonstrate to the council that the timely replanting requirement shall be fully and lawfully secured.

(3) Require the filing with the city of a performance guarantee to ensure compliance with the approved use permit. Such performance guarantee shall be in accordance with the provisions of chapter 26.5, and shall be in an amount determined necessary by the city to cover the cost of replacing the tree(s) as well as any costs that may be incurred by the city in the reinstallation of protective fencing.

(Ord. No. 86-125.02, § 9.01(1)--(5), 12-15-86; Ord. No. 92-125.06, Pt. II, 1-13-92; Ord. No. 93-125.07, Pts. IX--XI, 2-1-93; Ord. No. 98-125.11, Pt. VI, 2-9-98; Ord. No. 03-125.14, § 1, 4-7-03; Ord. No. 03-125.15, Pt. I, 5-5-03; Ord. No. 2003-125.16, Pt. I, 10-20-03; Ord. No. 2003-125.16, Pt. II, 10-20-03; Ord. No. 04-125.19, § 2, 9-13-04)

Sec. 37-31. Appeal from granting or denial.

A permit approved by the planning commission or woodlands review committee shall not be issued until ten (10) calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a use permit required by this article may request an appeal of the decision to the council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The council, upon review, may reverse, affirm or modify the determination and/or permit issued by the planning commission or woodlands review committee.

(Ord. No. 86-125.02, § 9.01(6), 12-15-86)

Sec. 37-32. Term.

Any and all permits issued by the city as requirements of this chapter shall be declared null and void if commencement of work so permitted is not started within a reasonable time, but not to exceed six (6) months. But in no case will the permit be valid for more than twelve (12) months. Permits not used within this period will become null and void and future work will require a new application. For purposes of this section a permit shall be used when the work authorized by the permit is completed.

(Ord. No. 86-125.02, § 9.01(7), 12-15-86)

Sec. 37-33. Display of permit.

The grantee of a permit required by this article shall prominently display on the site the permit issued. Such display shall be continuous while trees are being removed or replaced or while work authorized under the permit is being done, and for at least ten (10) days after the completion thereof. Failure to allow entry for inspection by city representatives pursuant to the conditions attached to the permit shall constitute a violation of this chapter.

(Ord. No. 86-125.02, § 13.01, 12-15-86)

Secs. 37-34--37-40. Reserved.

ARTICLE III. DEAD, DAMAGED, OR DANGEROUS TREES ON PRIVATE PROPERTY

Sec. 37-41. Private trees--Clearance.

Owners of trees on private property shall maintain or treat such trees so that they do not become a danger to the public or to adjacent property and so that they do not harbor dangerous or communicable insect infestation or tree disease. It shall be the responsibility of such owners

to remove all dead, diseased or dangerous trees, or any broken or decayed limbs which threaten the safety of the public or are a hazard to adjoining property. Any owner of any property failing to maintain or remove trees in conformity with this section or section 37-42 shall be notified in writing by the city forester to do so; which notice shall specify the time period within which such maintenance or removal shall be performed. In determining whether the condition of a tree threatens safety or is a hazard, the city forester shall utilize the International Society of Arboriculture Guide to Evaluation of Hazard Trees in Urban Areas. Upon the expiration of the notice time period, the city forester may cause the maintenance or removal to be done. All expenses incurred in performing such work, including administrative expenses, shall be debt due the city from the owner or owners of the property. The city forester shall provide the city treasurer verification of such costs within ten (10) days of receipt of such verification, the treasurer shall forward a statement of the total charges assessed to the owner as shown by the last current assessment or tax roll, and such assessment shall be payable to the city treasurer within thirty (30) days from the date when the statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property in accordance with Chapter 11 of the City Charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with interest at the rate of six (6) percent per year compiled from the time of filing such certificate with the city assessor. Such amount shall be a debt of the person to whom assessed until paid and, in case of delinquency, may be enforced as delinquent city property taxes or by a suit against such person.

(Ord. No. 04-125.17, Pt. I, 5-3-04)

Sec. 37-42. Same--Diseases and infestations.

When the city forester shall discover that any tree growing on private property within the city is afflicted with any dangerous and communicable insect infestation or tree disease, including, but not limited to Emerald Ash Borer, Dutch elm disease, elm blight, Verticillium (albo-atrum) wilt, Oak wilt or Bronze Birch borer, he shall forthwith serve a written notice upon the owner or his agent, or the occupant of the property describing the tree, its location and the nature of the infestation or tree disease and ordering the owner, agent and occupant to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading thereof, specifying the measures required to be taken. Such order may require the pruning, spraying or destruction of trees as may be reasonably necessary. Every such notice shall be complied with within the time period specified within the notice.

(Ord. No. 04-125.17, Pt. I, 5-3-04)

Sec. 37-43. Same--Appeal of destruction order.

In case the owner, agent or occupant of the property shall feel himself aggrieved at an order of the city requiring the maintenance, removal, treatment or destruction of any tree, he may within forty-eight (48) hours make an appeal to the director of public services by communication filed with the department of public services. The director shall set a time for consideration of the appeal, provide notice of the time to the applicant, and thereafter make a determination as to the appeal.

(Ord. No. 04-125.17, Pt. I, 5-3-04)

Sec. 37-44. Same--Owner's failure to comply with destruction order.

In case the owner, agent and occupant of the property should refuse to carry out the order of the city forester within the time directed, or in case of an appeal within five (5) days after the director shall have affirmed such order, the city forester shall carry out the pruning,

spraying or other treatment, maintenance, removal or destruction of the trees as deemed necessary by him. All expenses incurred in performing such work, including administrative expenses, shall be recovered in the manner provided in section 37-41.
(Ord. No. 04-125.17, Pt. I, 5-3-04)

Sec. 37-45. Violations.

In addition to the other remedies provided in this article, the failure of a property owner to comply with a notice from the city forester requiring the treatment, maintenance, removal or destruction of a tree shall be deemed a violation of this Code.
(Ord. No. 04-125.17, Pt. I, 5-3-04)

5.100 TREES, SHRUBS AND PLANTS CITY OF MOUNT CLEMENS, MICHIGAN code eff. Oct., 1958; amend. Jan., 1978 further amend. eff. 8-19-00

5.101 Sec. 1. DEFINITIONS.

The word "*trees*" , as used in this Ordinance, includes shrubs which grow higher than fifteen feet; "*shrubs*" under fifteen feet in height may include vines and plants; the word "*growth*" includes any or all thereof unless the context otherwise requires.

code eff. Oct., 1958; amend. Jan., 1978; further amend. eff. 8-19-00)

5.102 Sec. 2. APPLICATION FOR PERMIT.

Application for any permit required by the provisions of this Ordinance shall be made in the form and manner prescribed by the City Clerk. No permit shall be granted until it has been approved by the Superintendent of Streets.

Ord. eff. 8-19-00)

5.103 Sec. 3. PUBLIC WAYS; TREES, CONTROL.

The Superintendent of Streets shall have complete charge and control of the planting, cutting, trimming and removal of trees and other growth upon all public highways and places, and the Superintendent may promulgate and adopt rules and regulations to effectuate the provisions of this Ordinance.

Ord. eff. 8-19-00)

5.104 Sec. 4. PROHIBITED VARIETIES.

No person, except the City, shall plant, remove or destroy any ornamental shade tree or shrub in any public way; nor plant any variety of the following species of trees, or other similar quick-growing trees:

Popular

Willow

Box Elder

Tree of Heaven

Silver Leaf Maple

Fruit

Horse Chestnut

Cottonwood

Chinese Elm

Siberian Elm

Catalpa

Berry

Black Walnut

Mulberry

Mountain Ash

Choke Cherry

anywhere within the City rights-of-way without first procuring a permit from the Superintendent of Streets.

Types of trees permitted: The types of trees permitted to be planted within the City and their locations shall be listed on a master list kept by the Superintendent of Streets which list shall have been recommended as acceptable or unacceptable species of trees for planting by resolution of the City Commission, which list may be updated or revised from time to time by the Tree Advisory Commission of the City. Copies of the approved list of species of trees permitted shall be made available by the Superintendent of Streets upon request of any individual.

(Ord. eff. 8-19-00)

35.105 Sec. 5. DAMAGE FROM LEAKING GAS.

Gas pipes or mains within any public right-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within 24 hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.

(Ord. eff. 8-19-00)

35.106 Sec. 6. TREES; MUTILATING, POSTING, PROHIBITED.

No person shall cut, mutilate, remove, saw or trim any tree within any public way in the City to make room for any telephone, cable or electric lines, moving building or machinery or other things, or for repairing sidewalks, without first procuring a permit from the Superintendent of Streets. No person shall attach, tack or in any manner fasten to any tree in a public way any wire, rope, chain, cable, sign, card, board, poster or other article, nor hitch any animal thereto.

(Ord. eff. 8-19-00)

35.107 Sec. 7. TRIMMING, PUBLIC UTILITIES, PERMIT REQUIRED.

No person owning or operating any bus line or other motor transportation over the city streets, or any public utility lines upon, above or below the surface, shall trim, cut or cause to be trimmed or cut any tree, shrub or plant along any public way or place, without first having submitted to the Superintendent of Streets a plan of the work to be done and having procured a permit for such work. Nothing in this section shall be construed to apply to the removal, under the direction of the Street Department, of any stump, roots, tree, shrub, vine, plant or part thereof, wherever such removal shall be found necessary in the construction or repair of any street, sidewalk, sewer, pavement or other public improvement.

(Ord. eff. 8-19-00)

35.108 Sec. 8. DUTIES OF OWNERS OF TREES ON PRIVATE PROPERTY.

The owner shall, or the City may, remove from any tree, shrub, plants or vine, all dead, decayed, unsightly, broken or dangerous limbs and branches that overhang or are close to the public way; and when any tree, shrub, plant or vine is dead, the owner shall remove the same, or after notice to the owner, the City may do so and charge the cost thereof to the owner.

Every owner of any tree, shrub or plant, overhanging the street or right-of-way within the City shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of ten (10) feet above the surface of the street, alley or right-of-way. Owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

(Ord. eff. 8-19-00)

35.109 Sec. 9. EXCAVATIONS, GUARDS REQUIRED.

In any excavation, or the erection, alteration or repair of any building or structure, or other work, the property

owner or someone for him shall place or cause to be placed such guards around all nearby trees, shrubs and plants in the public way to prevent injury to them.

(Ord. eff. 8-19-00)

35.110 Sec. 10. STONES, BRICKS, SAND, PROHIBITED.

No person, except the City, shall place or maintain upon the ground in any public way or property of the City any stone, brick, sand, concrete, planter box, or other material or article which may injure or which may in any way impede the full and free passage of water, air or fertilizer to the root of any tree, shrub, vine or plant, without leaving an open space of ground not less than four feet in diameter surrounding same.

(Ord. eff. 8-19-00)

35.111 Sec. 11. DESTRUCTION OF DISEASED TREES; OWNER, OCCUPANT, DUTY.

The owner or occupant of any premises on which is located any tree or other growth, if infected by disease or by injurious insects or if in a dangerous condition, shall destroy it when such destruction is necessary for the protection of other trees and growth and for the public safety, health and welfare.

(Ord. eff. 8-19-00)

35.112 Sec. 12. OWNERS, OCCUPANTS; FAILURE TO PERFORM ACTS; CITY AUTHORITY; COSTS AND CHARGES.

If the owner or occupant of any premises fails to perform any duty required of him by this Ordinance, the Superintendent of Streets may serve notice upon such owner or occupant, directing him to have the work done, and upon his failure to comply with the notice, the City may enter upon the premises and perform the work required and charge the cost thereof to the owner or occupant.

(Ord. eff. 8-19-00)

35.113 Sec. 13. SPACING OF TREES PLANTED IN RIGHT-OF-WAY.

In all future planting of shade trees in the right-of-way, such trees shall be spaced not less than forty feet from an existing tree in the right-of-way unless the existing tree has been approved for removal within a period of two years from the date of planting of the new tree, and except that in unusual cases any owner of a single lot may, in order to provide a shade or ornamental tree in front of this lot, secure special permission from the Superintendent of Streets to have a tree planted closer than forty feet from an existing tree, but in no case shall such planting be less than thirty feet from any existing tree on the right-of-way.

No tree shall be planted between the curb and sidewalk less than two and one-half feet from the sidewalk; trees on private property adjacent to the sidewalk shall be planted not less than three feet therefrom. No trees shall be planted where the distance between the back of the curb and the sidewalk is less than four feet six inches in width. No trees shall be planted nearer to the intersection of any two or more streets than twenty-five feet from the point of intersection of two right-of-way lines.

(Ord. eff. 8-19-00)

35.114 Sec. 14. CUTTING, PRUNING, SPRAYING AND PLANTING PROHIBITIONS.

No person shall prune, spray, cut, perform surgery or destroy any trees or shrubs in the right-of-way or parks at any time without first obtaining a permit from the Street Department. No person shall plant any shade or ornamental trees in the right-of-way or parks except by permit from the Superintendent of Streets, and then only if they are of a variety listed as acceptable. In no event shall any tree be planted in the right-of-way where police, fire, street lighting, traffic signal or public utility overhead wires and equipment are located that will exceed a maximum growth height of forty feet. No tree shall be planted which is less than eight feet in height above ground.

(Ord. eff. 8-19-00)

35.115 Sec. 15. PENALTIES.

Any person found guilty of violating this Ordinance is subject to a fine not to exceed five hundred dollars or imprisonment for a term not exceeding ninety days, or both.

(Ord. eff. 8-19-00)

Chapter 40 TREES AND OTHER VEGETATION

3:11. Definitions.

The following definitions shall be applicable in the interpretation of this chapter:

- (1) "Lawn extension": The unimproved portion of any street right-of-way.
- (2) "Superintendent": The superintendent of the department of parks and recreation.

(Ord. No. 43-04, § 17, 1-3-05; Ord. No. 19-05, § 1, 5-16-05)

3:12. Permits for tree planting care or removal.

The city administrator shall have the sole authority over the planting, maintenance and removal of trees in the street right-of-way and other city property. No person without written permission of the city administrator shall plant, remove, break, spray or take any action which will injure or destroy any tree or shrub, the base of which is located in the street right-of-way or other city land.

(Ord. No. 43-04, § 17, 1-3-05; Ord. No. 19-05, § 2, 5-16-05)

3:13. Private grounds.

No tree or other vegetation which by virtue of disease, damage or insect infestation presents a hazard to persons or vegetation on public property shall be maintained on private property.

3:14. Trimming and corner clearance.

(1) Trees and other vegetation on private property shall be maintained so that no part thereof intrudes upon public right-of-way in the space 8 feet above the surface of the right-of-way.

(2) Vegetation adjacent to intersections shall be maintained to allow for adequate sight distance based on the criteria in the AASHTO (American Association of State Highway Transportation Officials) Policy on Geometric Design of Highways and Streets, 5th Edition (2005), or as subsequently amended.

(Ord. No. 19-05, § 3, 5-16-05)

3:15. Lawn extension and city street right-of-way.

The owner of every parcel of land is responsible for grading, planting, mowing and raking the extension or city street right-of-way so that it is covered with turf grass with an average height not in excess of 12 inches or other ground cover vegetation with an average height not in excess of 36 inches above the adjacent road surface unless it presents a view hazard based on the criteria in the AASHTO (American Association of State Highway Transportation Officials) Policy on Geometric Design of Highways and Streets, 5th Edition (2005), or as subsequently amended. The city shall not be liable for damage to any vegetation planted, or to any property or fixtures placed, in or upon the lawn extension or the city right-of-way that results from work performed by the city in the lawn extension or right-of-way.

(Ord. No. 43-04, § 17, 1-3-05; Ord. No. 19-05, § 4, 5-16-05)

3:16. Grass and weeds.

On private property no turf grass shall be permitted at a height greater than 12 inches.

(Ord. No. 43-04, § 17, 1-3-05; Ord. No. 19-05, § 5, 5-16-05)

3:17. Enforcement.

If private property, a lawn extension or city right-of-way is not maintained as required by this chapter, the city administrator may have the work done to bring the property lawn extension or city right-of-way into compliance. The notice provided for enforcement of sections 3:14 3:15 and 3:16 shall be sent to the address of the owner as shown on the assessor's records at least 3 days prior to commencing the work. In the case of an immediate hazard to public safety no prior notice shall be necessary. The actual costs of the work needed to bring the property, lawn extension or city right-of-way into compliance, plus an administration fee of \$50.00 shall be billed to the owner. If this amount is not paid within 45 days, it shall be a special assessment against the property as provided in section 1:292 of this code.

(Ord. No. 19-05, § 6, 5-16-05)

3:18. Financial hardship.

Under proof of financial hardship, the administrator may authorize charges under section 3:17 to be paid in installments or to be reduced and will be subject to council approval.

3:19. Penalties.

The owner (as shown on the assessor's records) of private property subject to this chapter is responsible for compliance. Each violation of this chapter shall be a civil infraction punishable by a civil fine of up to \$1000.00, plus costs and all other remedies available by statute. Violation of this chapter shall be punishable by a civil fine of not less than \$100.00 for the first offense, not less than \$250.00 for the second offense, and not less than \$500.00 for each additional or subsequent offense within a 2-year period, plus costs and all other remedies available by statute. The maximum fine for any offense shall not exceed \$1000.00. Each day of violation shall be a separate violation. If the penalty is not paid within 45 days, it shall be a special assessment against the property as provided in section 1:292 of this Code.

(Ord. No. 19-05, § 7, 5-16-05)