



Planning Commission
97 North Broad Street
Hillsdale, Michigan 49242-1695
(517) 437-6440 Fax: (517) 437-6450

Planning Commission Agenda
March 19, 2019

- I. Call to Order 5:30**
 - A. Pledge of Allegiance
 - B. Roll Call
- II. New Member Welcome**
- III. Public Comment**
 - Any Commission related item – 3 min. limit
- IV. Consent Items/Communications**
 - A. Approval of agenda – **Action**
 - B. Approval of Planning Commission 02.19.2019 minutes – **Action**
- V. Presentation**
 - A. Keefer Hotel
- VI. Old Business**
 - 42 Union – **Discussion**
- VII. New Business**
- VIII. Master Plan Review**
 - B. Sections – **Action**
 - a. Community Facilities & Services
 - b. Natural Features
 - c. Utilities and Transportation
- IX. Zoning Ordinance Review**
 - A. Hillsdale Municipal Code Chapter 14 – **Discussion**
- X. Zoning Administrator Report**
- XI. Commissioner’s Comments**
- XII. Adjournment**

Next meeting April 16, 2019 at 5:30 pm

PLANNING COMMISSION MINUTES

HILLSDALE CITY HALL,

97 N. Broad Street

February 19, 2019 at 5:30 PM

I. Call to Order

- A. Chairwomen Yoder called the meeting to order at 5:32 pm
- B. Members present: Chairwoman Amber Yoder, Vice Chairman Samuel Nutter, Secretary Kerry Laycock, Mayor Pro-tem William Morrissey
- C. Others present: Alan Beeker
- D. Members absent: Commissioners Eric Moore and Ron Scholl
- E. Chairwomen Yoder acknowledged the resignation of Commissioner Eric Swisher

II. Public Comment

There was no public comment.

III. Consent Items/Communications

Vice chairman Nutter requested that the meeting agenda be pulled from the consent items and requested that a discussion of an amendment to the zoning permit for 42 Union street be added to Old Business. Commissioner Laycock moved to approve the amended agenda. Commissioner Morrissey seconded. All were in favor. Commissioner Laycock moved to approve the January meeting minutes. Commissioner Morrissey seconded. All were in favor.

IV. Old business

- A. Planning Commission annual report
Vice chairmen Nutter reported that he is working on the annual report and is following th existing format. He expects to have the report to City Council by June 2019.
- B. 42 Union St. privacy fence requirement (Zoning permit 2015-007)
Vice Chairman Nutter noted that the zoning permit for 42 Union St. include a requirement for a privacy fence on the north side of the parking lot. Vice Chairman Nutter and Mr. Beeker indicated that the affected property owner does not wish for a privacy fence to be installed as it will curtail sunlight and disturb tended vegetation. Mr. Beeker noted that current fence meets all requirements of the ordinance. Vice chairman Nutter motioned that the zoning permit for 42 Union St. be amended and the privacy fence requirement be removed. Commissioner Morrissey seconded. All in favor.

V. New Business

There was no new business.

VI. Master Plan review

Commissioners reviewed pages 1 -23 of the existing plan and made minor corrections to the document. Commissioner Morrissey's careful reading of the document enabled many corrections to grammar and word usage. It was agreed to add additional information about the demise of passenger rail service to the history section.

Commissioner also agreed that the plan update should include a summary of accomplishments since the last plan update. Specifically, the plan update will not the accomplishment of goals as set forth in the previous plan update. The Commission will identify new goals for the current update of the plan.

VII. Zoning Ordinance Review

Commissioners discussed updating the existing tree ordinance (Chapter 14). It was agreed to include this as a goal in the Master Plan update.

VIII. Zoning Administrator's Report

Mr. Beeker emphasized that the Planning Commission is not responsible for code enforcement. Specifically, the Planning Commission is responsible for the review of site plans for potential building projects, regulation of land use, zoning ordinance adoption and amendment, re-zoning requests, preparation of a Master Plan, Capital Improvement Plan and review of capital projects. Code enforcement is a staff function under the ultimate authority of City Council. Commissioners praised Mr. Beeker for the significant improvements that have been made relative to code enforcement recognizing the difficulty of this work.

Vice Chairman Nutter requested a clarification of the Meijer development project. Mr. Beeker indicated that City jurisdiction of the project is triggered by installation of City water service to the site.

Mr. Beeker updated the Commission on the Dawn Theatre project. Bids submitted were for a complete historical renovation and exceeded available funding. A new architect has been hired and contractors have been asked to resubmit bids for renovation.

IX. Commissioner Comments

There were no Commissioner comments.

X. Adjournment

Commissioner Laycock motioned to adjourn. Commissioner Nutter seconded. All in favor. Meeting adjourned at 6:53 pm.

Next meeting: March 19, 2019 at 5:30 pm.



TO: Planning Commission

FROM: Zoning Administrator

DATE: March 19, 2019

RE: 42 Union Zoning Permit

Background: Per the discussion during the February regular meeting, I contacted the City Attorney for advice on amending the parameters of Zoning Permit number PZ2015-007. One of the items that had been proposed and approved by the Planning Commission during the review of the 42 Union application was to erect a privacy fence on the north side of the existing parking lot. The owner adjacent to the north had requested that the existing chain link fence be allowed to remain. Commissioner Nutter spoke with the owner of 42 Union about the fence and she told him she was honoring the neighbor's request and had not changed the existing fencing. Commissioner Nutter had asked the Commission to amend the parameters of the existing zoning permit. The discussion ended with a suspension of any action until there was a ruling by the City Attorney as to whether such an amendment was allowable. The response from the City Attorney is attached.

Alan Beeker

From: THOMAS L THOMPSON <tlthompsons@me.com>
Sent: Friday, March 01, 2019 1:02 PM
To: Alan Beeker
Subject: Re: 42 Union and the Planning Commission

CONFIDENTIAL AND PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Alan,

I think this implicates not the requirements of City ordinance, but the provisions of the development agreement, since this was a project funded in part by an MEDC block grant. The version of the agreement that I have on my computer includes provisions in Section II, Scope of Work, such as:

B. Scope of Work/Activities to be Completed.

As a condition of receiving the Grant Funds and otherwise receiving the rights and benefits of this Agreement from the City, Developer will be responsible for undertaking and completing all of the work and performing all of the requirements associated with the Project as described in the overall proposed project description, the description of specific work activities, and the budget forms contained in the Part 1 and Part 2 Applications completed and submitted to the MEDC in association with the Project, (copies of which Applications are attached to this Agreement as Exhibits 2 and 3, respectively, and which are specifically incorporated into this Agreement by reference), all in a manner satisfactory to the City and consistent with any and all applicable legal and professional requirements and standards.

and

D. Levels of Accomplishment – Goals and Performance Measures.

Developer shall complete the Project consistent with the terms of this Agreement and the other project documents, and Developer's progress toward and ultimate completion of the Project shall be verified by the City's third-party administrator. Developer shall insure that the Project progresses in a manner consistent with the Project Milestones as delineated in the project documents attached to this Agreement. The Project shall be completed in full on or before September 30, 2017.

Developer shall make no changes or deviations from the Project documents and scope of work provisions of this Agreement whatsoever, unless Developer first seeks and receives the written approval of the City. The City's decision to approve or deny any such request for a change or deviation shall be solely within the City's discretion, regardless of whether the exercise of such discretion is reasonable or unreasonable. Developer specifically understands and agrees that the City will not approve any change or deviation with regard to the Project, unless and until such time as the requested change or deviation has been submitted to and approved by the MSF and/or the MEDC and any and all requirements for the implementation of such requested and approved change or deviation have been satisfied, including, but not limited to, obtaining any necessary Environmental Review.

Assuming that the final signed version of the development agreement contains these provisions, it strikes me that you cannot allow a change in the project requirements unless the developer first comes to the City and requests the change, which the City would then review and determine if it was willing to approve the change, with the

proposed change to then be submitted to the Michigan Strategic Fund and the Michigan Economic Development Commission for their approval as well.

Tom

Thomas L. Thompson
Lovinger & Thompson, P.C.
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Hillsdale, Michigan 49242
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On Mar 1, 2019, at 11:33 AM, Alan Beeker <abeeker@cityofhillsdale.org> wrote:

Hi Tom,

A question from the Planning Commission:

At the time of 42 Union's Site Plan review, the PC placed a requirement that the chain link fence (in good condition) on the north side of the parking lot be changed out for a privacy fence. Both fences are the same height. There have been complaints from some individuals that the replacement has not occurred. There is no reason by ordinance that the fence be replaced and the neighbor asked that the owner of 42 Union leave it as he has plantings on his side that would be damaged by the work. The Planning Commission would now like to remove that requirement but are concerned with legality. What are your thoughts?

I appreciate your help in this.

Alan C. Beeker, MCAT
Zoning Administrator

City of Hillsdale
97 North Broad Street
Hillsdale, Michigan 49242



Community Facilities and Services **Master Plan**

Schools

Existing Facilities and Standards

Until the 1970s, the majority of American children walked to school. Today less than 15 percent do, mostly because they cannot. Busing and the School of Choice program has contributed to this trend. In planning for our school and children's future, we should remember three facts; smaller schools produce higher-performing students, walking to school produces healthier children, and busing and parental chauffeuring exacerbate rush-hour traffic. With regard to placemaking, the Hillsdale School District provides an advantage in the fact that the school buildings are still located within the city limits.

Hillsdale Community Schools

Carl L. Bailey Elementary School is located on the east side of Manning St., between Barry and East South Streets in the South Part of the City. The school was built in 1935 with an addition in 1971. The school has a student capacity of 500. The complex comprises 1.6 acres.

S.J. Gier Elementary School is located on the north side of Spring Street. It was built in 1952, with additions in 1972, 1978 and 1992. They are currently in the process of adding a gymnasium. It has a student capacity of 500. The school complex comprises 4.4 acres

Davis Middle School is located near the center of City. It was built in 1929 as a High School, with additions in 1966 and 1977. The school contains 31 classrooms and has a student capacity of 900. The school sits on 3.9 acres.

Hillsdale High School is located on the southwest side of the City, south of the Davis Middle School. It was built in 1959, with an addition completed in 1967. The building contains 38 classrooms and has a student capacity of 900. The school sits on 23.1 acres.

Bus Service — The Hillsdale Community School District serves a 68 square mile area and portions of seven (7) Townships with the City of Hillsdale as its geographic center.

Private and Charter Schools

Hillsdale Preparatory is a local charter school. It opened in August of 1997 and serves grades Kindergarten through 7th grade. It provides a full curriculum.

Will Carleton Academy is a local charter school and serves grades Kindergarten through 12th grade. It is located on W. Hallett St. on the West side of the City. It provides a full curriculum, arts and athletic program.

Hillsdale Academy is a private school operated in cooperation with Hillsdale College. It serves grades Kindergarten thru 12th grade and provides a full curriculum, arts and athletic program.

Hillsdale County Intermediate Schools

Parke Hayes Administrative Building is located at 310 W. Bacon St. The first floor is committed to administrative office space and conference areas. The lower level provides space for the Early-on and special education infant/toddler programs.

Intermediate School District administrative services for General and Vocation Education Programs are within the administrative building complex.

The infant/toddler program provides service to children and parents including:

- Evaluation
- Educational Instructional Services
- Physical Therapy
- Occupational Therapy
- Speech Therapy
- Parent Educational Sessions

Renaissance School, located at the Parke Hayes Administrative Building, is an alternative educational setting for middle school students who need help with academic and behavioral issues. Opened in 2004, the school is a cooperative venture between the Hillsdale County Intermediate Schools and the local K-12 districts in Hillsdale County, and the Will Carleton Academy. Curriculum is centered on practical life experiences, and the infusion of services addressing the needs of the whole child and the family.

The mission of the school is to enrich the lives of Hillsdale County residents by providing collaboration between

schools, community groups and human service providers for educational excellence in alternative programming, the advancement of the arts, and the building of strong community and family ties.

Greenfield School is located at 3710 Beck Rd. and is the County center for special educational students with severe disabilities. Transportation is provided to students throughout the County for educational programs and services located at the Beck Rd. facility including:

- Preschool (ages 2-6)
- Severely Multiply Impaired
- Moderately Cognitive Impaired
- Autistic Impaired
- Severely Cognitive Impaired

Support services are also available for:

- Physical Therapy
- Hearing Impaired
- Occupational Therapy
- Visually Impaired

Dean Jennings Administrative Facility is located within the same complex as the Greenfield School. Special Education administrative services include the Director of Special Education and monitoring. Consultant services are provided throughout the County and located at this location as well. These services include:

- Physiological evaluation service
- Visually Impaired Consultant Services
- Consultant service for students with and emotional impairment
- Hearing Impaired Consultant Services
- Speech Therapy Services
- Transition Services

Hillsdale Area Career Center is located in the Hillsdale Industrial Park at 279 Industrial Drive. The facility was originally built as a manufacturing facility and was purchased in 1997 by the Intermediate School District. It was later remodeled for the present day Career & Technical Education School. Career and Technical Education programs provide 11th & 12th grade students with the opportunity to acquire skills necessary for successful career entry, advancement and/ or continuing education. These skills are transferable as well as

job specific and basic to students' general education providing them with the foundation for life-long learning. Approved programs being offered for 11th & 12th grade students are:

- Health Science Programs
- Multimedia Marketing Program
- Drafting & Design Technologies
- Construction Trades Program
- Criminal Justice Program

Colleges

Hillsdale College is a co-educational, private residential college. Founded in 1844 and chartered in 1855, it offers traditional fields of concentration, as well as a number of interdisciplinary choices. Hillsdale College offers baccalaureate degrees and one post graduate degree.

Jackson College-LeTarte Center, Hillsdale is a community college serving approximately 550 students in Hillsdale County. Jackson College offers Associate Degrees in Applied Sciences, Arts, Science and General Studies. In 2014, Jackson College launched its first Bachelor degree – Bachelor of Science in Energy Systems Management.

Hillsdale Public Schools Enrollment by Grade

Grade	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Pre-K + K	148	134.5	164.5	186.5	175.5	184
1st Grade	149	132.5	113.84	113.35	143.33	134.19
2nd Grade	123.5	148.5	136.16	108.75	120.61	133.03
3rd Grade	139.94	113	141	134.65	108.83	105.23
4th Grade	169.5	137	113	132.93	135.52	102.01
5th Grade	143.5	169	150.47	121.44	130.32	134.50
6 th Grade	144.37	136.50	170.37	148.88	121.96	119.13
7th Grade	149.10	135.46	135.14	168.14	138.81	113
8th Grade	166.10	141.37	140.19	132.38	158.94	146.45
9th Grade	159.36	164.99	145.14	132.19	134.61	155.51

10 th Grade	149.29	146.87	154.92	140.99	123.92	130.19
11 th Grade	146.95	149.10	163.17	163.38	150.62	147.21
12 th Grade	135.25	134.75	141.95	158.24	156.82	156.17
Total	1923.86	1843.54	1869.85	1841.82	1799.79	1760.62

Source: Hillsdale Public Schools

Total enrollment for Hillsdale Public Schools remained fairly steady between 1989 and 1995 corresponding with the general population that has experienced low/no growth. Since 1995, the population of enrolled students has started a slow, steady decline from a high of 2,517 students in 1990 to a low of 2,035 students in 1999. Charter schools may be absorbing some of the losses experienced by the school district, but recession has been the greatest factor in the last three years. (refer to Middle Cities Enrollment Projection).

Recreation

Hillsdale has nine city parks. They provide approximately 375.13 acres of space. They include Wildlife Sanctuary, Cold Springs, Keekoose, Fields of Dreams, Lo Presto Field, Stock's Park, Waterworks, Owens, and Sandy Beach. Also, there is the Baw Beese Trail, Meyer Parkway, Jim Inman Park and Slayton Arboretum. Three of these parks have access to Baw Beese Lake, which allows for water related activities. Other recreational facilities include a new pedestrian way; a portion of the system is currently in place. Asphalt paths are available from Fayette Street out to Sandy Beach which is part of the North Country Trail System. There are also two nine-hole and one 18 hole golf courses open for public use. A more in-depth inventory of existing recreational facilities is provided below taken from the City's Recreation Plan.

Existing Recreation Facilities

The following table is an itemized listing of the existing recreation facilities in the City and the planning area. In terms of Recreation Land, the National Recreation Association recommends a minimum of 10 acres per 1,000 persons made up of playground and neighborhood parks, play fields and community parks, county parks, and large regional parks and preserves. The City has unique circumstances, however, which indicates an opportunity and a desire to achieve more than minimum because of low density development character,

large expanses of vacant land with trees, and the uniqueness of water resources.

Existing Recreation Facilities — 2015

Name of Facility	Owners	Acres	Facilities
Mill Race Golf Course	Private	60	9-hole course, driving range, putting green, rental clubs, pro shop, snack bar, pull carts, riding carts, leagues.
White Oaks Golf Course	Private	80	18-hole course, pro shop snack shop, pull carts, riding carts.
Hillsdale Golf Course & Country Club	Private	60	9-hole course, pro shop, restaurant, push carts, riding carts.
Sam LoPresto Park (Griswold)	City	5	Baseball fields with benches, bleachers, parking.
Stocks Park	City	8	Tennis courts, playground equipment, picnic tables, pond and stream.
Waterworks Park	City	9	Playground equipment, grills, boat launches, fishing area, parking area, outhouses, picnic tables.
Keekoose Park	City	3	Baseball diamonds with benches, bleachers, playground equipment, parking area.
Owens Memorial Park	City	25	Playground, grills, pavilions, picnic tables, outhouses, benches, fishing area, open area.
Cold Springs Park	City	2	Picnic tables, playground, grills, fishing, open play area.
Lewis Emery Park	County	90	Picnic tables, grills, playground, play fields, shelter, community building, sled runs and fishing area.
Orville Meyer Parkway	City	1-10	Picnic area, 9 hole disk golf, open area.
Sugar Bush Park	County	5	Picnic area, playground, open area.
Gateway Park	County	5	Picnic area, playground, open area.
Hillsdale Courts/Jim Inman Park	School	4	Tennis courts with lights, shuffle board, outdoor basketball courts with lights.
Hillsdale High School	School	10	Football fields with lights, baseball fields, softball fields, and gymnasium.
Davis Middle School	School	2	Two gymnasiums, outdoor basketball courts, play area (parking lot), auditorium.

Bailey Elementary School	School 1	Gymnasium, playground, ball area, outdoor basketball courts.
Gier Elementary School	School 2	Indoor and outdoor basketball courts, multipurpose room (gymnasium/cafeteria), playground with play equipment.
Hillsdale College	Private 20	Football fields, track (indoor and outdoor), bleachers, baseball field, softball field, tennis courts, weight room, swimming pool, sauna, whirlpool, arena (basketball, volleyball, aerobics, physiology room, karate), arboretum (nature trails, pond with fish, shelters, tree identification, scuba).
American Legion	Private 2	Docks, fishing access, clubhouse (bar and restaurant), play-ground equipment.
Boy Scouts Camp	Private 5	Camp, nature trails, water access (fishing, swimming), boat-ing docks.
6 Lakes Campground	Private 5	Campground, boat launch.
Field of Dreams	City 12	3 baseball fields, 2 soccer fields and a sliding hill.
Baw Beese Trail	City 2 mi.	Bike/walking trail.

Source: City of Hillsdale Recreation Plan.

Fire Protection

The Hillsdale City Fire Department (HCFD) is located at 77 E. Carleton Road less than one block from City Hall. Built in 1966, the fire station is a one story building with office space, living quarters, kitchen and a dormitory for fire personnel. In addition, the station has five truck bays, two of which can be accessed from the rear of the facility.

The Fire Department is staffed 24 hours a day, 365 days a year. The HCFD has two pumpers; the main engine is a 2000 Pierce with a 750 gallon water tank and a 2,000 gallon per minute pump. The Engine also carries rescue equipment which includes 'jaws of life' cutting tools and saws as well as other extrication equipment. The Engine is also equipped to State standards with Medical First Responder supplies. The reserve Engine is

a 1989 E-One Pumper which is also equipped with a 750 gallon tank and a 1,250 gallon per minute pumping capacity. The HCFD also owns a 1983 Pierce Aerial vehicle. The Aerial has an 85 foot ladder with bucket and a 1,500 GPM pump. The HCFD also maintains two additional vehicles, a 1994 Ford F-350 with extended cab for wild land firefighting and a 1996 Ford Ambulance that has been converted to carry rescue equipment for Confined Space Rescue and Ice and Open Water Rescues.

The HCFD is a combination department with four fulltime fire officers consisting of a Fire Chief, Captain and two Lieutenants. The fulltime staff is complemented by 25 part-paid firefighters.

HCFD responds to an average of 750 calls for service per year. These calls include structural fires, vehicle fires and gas emergencies, (natural gas, propane or fuel spills). Service calls also include, fire alarms and vehicle accidents. The HCFD also respond to a wide variety of medical emergencies including chest pains, cardiac arrests, lacerations, and other injuries.

The HCFD works with the City Code Enforcement Office and conducts over 600 various inspections per year. The HCFD works with area businesses to establish safe occupancy rating and means of egress. The staff is also active in fire safety education through fire extinguisher training for various businesses and industries. In addition to businesses, staff also hold fire house tours along with early childhood education programs, including the 'Firefighter Phil Program', annual 'Kid's Fest' and the 'Payback for Education Program'. HCFD staff are also active with scout groups, church youth organizations and homeschool groups.

As is the case with most cities as old as Hillsdale, the building stock is vast and various. The City includes two colleges and multiple schools, public and private. The downtown includes multiple commercial and residential buildings that were built as early as the 1850s. The City also includes an Industrial Park. As the County Seat, the City is home to the County Courthouse, offices, sheriff department and jail. The City housing includes homes that date from the Victorian era to current and the various building styles can create challenges for the HCFD. In spite of the multiple challenges, the HCFD maintains a Class 4 ISO rating.

Police Protection

The Police Department, located in City Hall, provides 24-hour service and manned patrols. Phone calls are answered by the Police Department and Hillsdale County Central Dispatch and dispatched to the fire, public utilities, and street department. The county provides an emergency 911 phone system. The City Police provides primary road and traffic patrol, bike patrol, conducts investigations, responds to criminal complaints, and assists with crowd control, fire calls, and special event activities.

The City Police Department maintains the highest standards of professional excellence by believing in pro-active community policing. The Department provides the community with many community-relations projects (with one being the Drug Abuse Resistance Education (DARE) program).

The Department consists of 9 full-time state certified police officers: 1 Police Chief, 3 Sergeants, 1 detective, and 9 patrol officers. Also, the Department has a support staff of 1 civilian dispatcher, 1 administrative secretary, 5 school crossing guards, and 5 reserve police officers. The 4 patrol cars provide sufficient service with usually three 1-man cars on patrol.

Detainment facilities are provided by the Hillsdale County Sheriff's Department which has a jail capacity for 67 prisoners.

The Probate Court, Circuit Court of the County and District Court are all located within the City. There is currently not adequate court room space. Issues have arisen in the recent past with regard to transport, space etc. Video arraignment has helped to alleviate some of the problem.

Library

Library services, in one form or another, have been offered for nearly 125 years in the City of Hillsdale. In 1879 a group of women established a library association formed with the intention to "circulate good literature among the people of Hillsdale". The books they collected would eventually become the foundation of the Mitchell Public Library, which opened its doors in 1908 on the corner of Manning and McCollum Street.

The Mitchell Public Library served Hillsdale for 95 years until the construction of the Hillsdale Community Library in 2003, a two million dollar state of the art library building located on the corner of Manning and Bacon Street in the Central Business District. Growing from the initial collection of 2,666 volumes, the Hillsdale Community Library collection currently stands at over 44,000 and continues to grow with books, eBooks, audiobooks and videos.

The library facility includes a dedicated space for children's programming, a Young Adult area, expanded technology, and spacious community meeting rooms. The meeting rooms provide programming space for the library as well as space for local organizations to use for presentations and meetings.

City Hall

The Municipal Building (City Hall) is located on a triangle parcel formed by E. Carleton, N. Broad, and N. Hillsdale Streets. It contains the offices of City Manager, Zoning, Assessor, Police Department, Recreation Department, Clerk, Treasurer, Financial Director and Council Chambers. This building was constructed in 1911 as the City Hall. It is a three story, five-sided, classical revival-style building and it is listed as a contributing structure on the National Register of Historic Places.

The building was entirely rehabilitated in 1998. A total of \$1.755 million was expended to update and restore the building. The historic value of the building was preserved throughout the renovation project. The building is the only known five-sided governmental building in Michigan.

City Hall is isolated on an "island" surrounded on all sides by converging streets, making parking and accessibility a challenge. In 2006, two adjacent parking areas were completed to alleviate some of the problem: in the year 2007, M-99 was re-routed to the west side of City Hall and the eastern avenue was changed to one way traffic. This allows for some additional parking.

Health Services

Since beginning as a sanitarium in 1915 and as a hospital in 1920, Hillisdale Community Health Center (HCHC) has grown from a humble establishment to a state-of-the-art, 21st century healthcare facility. The Center includes 88 physician members, 32 health professionals, 47 acute care beds, 39 skilled nursing facility beds and the ten-bed Dempster W. Muffitt Center for Psychiatric Care. In March 2013, the Center opened the MacRitchie North Wing. The addition features 19 beds for the Center's Skilled Nursing Unit, while the lower level is dedicated to the hospital's Obstetrics Department.

The Hillisdale Community Health Center has continued to expand their physical plant, services, and expertise to meet the needs of the community. With a philosophy to serve the community and continually strive for excellence, HCHC has grown into a facility that serves Hillisdale County residents and attracts patients from many other areas. HCHC has a large Home Care Department, Home Oxygen and Infusion Chemotherapy Center.

HCHC is a technologically advanced health center, utilizing a 64 slice CT scanner and magnetic resonance imaging, state-of-the-art lab equipment for in-house diagnostics, and high-tech critical care and emergency departments, a productive surgery department, including four surgical suites and an ophthalmology suite. The third floor is dedicated to the Hillisdale Center for Joint Replacement with private suites for orthopedic patients as well as a sleep lab diagnostic center.



Natural Features Master Plan

City of Hillsdale Master Plan

The area's natural features will continue to be a major factor in determining Hillsdale's future by influencing the quality of life as well as by providing opportunity for economic development.

Geology, Soils and Topography

As the glaciers of the ice age melted, glacial runoff cut across the till plains and moraines forming outwash plains and glacial channels. These surface formations cover most of the City and consist of assorted glacial drift deposits including boulders, gravel, sand and clay. The soils in Hillsdale and surrounding areas are consequently mainly Fox Sandy Loam with Plainfield Loamy Sands found in the northwest corner of the City and Griffin Sandy Loam found adjacent to the St. Joseph River. Both the Fox and Plainfield series soils are well-drained and have slight to moderate limitations for building. Griffin series soils are imperfectly drained and impose severe limitations on development due to the excessive moisture present in the soils.

The present topography is moderately hilly with a downtown elevation of 1,099 feet and a City range of 1,050 feet to 1,150 feet. In general, slopes within the City range from 0-6 percent.

Lakes and Rivers

According to the Michigan Lake Inventory, there are 388 bodies of water covering approximately 4,300 acres in Hillsdale County. Several significant lakes are located within or next to the City of Hillsdale. The major body of water is Baw Beese Lake. It covers more than 400 acres. King Lake is a 30 acre lake located about one mile south of Hillsdale. Barber Lake, which is a series of shallow lakes, covers about 160 acres immediately east of the City. In addition, a 10 acre body of water known as the Mill Pond is located in Hillsdale next to the fairgrounds. There are more than 600 acres of water in close proximity of Hillsdale residents.

In addition to the lakes, St. Joseph River flows from Baw Beese Lake in a northwesterly direction through the City. Flooding that occurs from the St. Joseph River is primarily due to spring runoff or a heavy summer rainfall. The greatest daily rainfall occurred on June 26, 1978 (6.07 inches of rain).

The National Flood Insurance Program was created to provide insurance at more reasonable rates than oth-

erwise available. The City of Hillsdale adopted flood hazard regulations and currently participates in a flood-plain management program. This program makes it possible for the residents to qualify for flood insurance.

Groundwater Quality

All residences in the City have access to City water. The City has 6 wells, which are 90 to 100 feet deep. The water is taken from a glacial rift which is recharged by surface runoff and springs. The quality of the groundwater is generally good. The City operates a water treatment facility which dispenses 4 million gallons of water per day and has the capacity for 7 million gallons. The plant filters iron and other minerals from the water supply, insuring quality water for all of the City's residents. The City has entered the Michigan Wellhead Protection Program to educate the citizenry and protect the ground water supply areas.

Wellhead Protection Area

The City of Hillsdale relies exclusively on groundwater for its drinking water source. In response to the concern over safety of public water supplies, the City has instituted a Wellhead Protection Program (WHPP). WHPPs develop long-term strategies aimed at protecting community drinking water supplies. The purpose of developing a WHPP is to identify the Wellhead Protection Area (WHPA) and develop long-term strategies aimed at safeguarding the area from contamination. A WHPA is defined as the surface and subsurface areas surrounding a water well or well field, which supplies a public water system, and through which contaminants are reasonably likely to move toward and reach the water well or well field within a 10-year time-of-travel. The State of Michigan requires communities to identify seven elements to be included in the WHPP. These elements along with a brief description are below.

- **Roles and Responsibilities** – Identify individuals responsible for the development, implementation, and long-term maintenance of the local WHPP.
- **WHPA Delineation** – Determine that area which contributes groundwater to the public water supply wells.

- **Contaminant Source Inventory** – Identify known and potential sites of contamination within the WHPA and include in a contaminant source inventory list and map.
- **Management Strategies** – Provide mechanisms which will reduce the risk of existing and potential sources of contamination from reaching the public water supply wells or well field.
- **Contingency Planning** – Develop an effective contingency plan in case of a water supply emergency.
- **Siting of New Wells** – Provide information on existing groundwater availability, the ability of the City Board of Public Utilities to meet present and future demands and the vulnerability of the existing wells to contamination.
- **Public Education and Outreach** – Generate community awareness in the WHPA by focusing on public education and the dissemination of WHPP information.

It is the intent of this Master Plan to encourage protection of the City's public water supply wells through the establishment of a Wellhead Protection Zoning Ordinance. Within the ordinance, zoning regulations will limit land uses and practices that may degrade groundwater quality within and outside the WHPA.

The most significant sources of water supply contamination are landfills, surface impoundment areas, subsurface percolation from septic tanks and cesspools, open dumps, uncapped or improperly capped abandoned wells, injection wells and underground storage tanks. These uses represent both *point* and *non-point* contamination sources. Point source is the term used to describe contaminants, which originate in the immediate area of the well or tap. All of the above, if located in close proximity to the water supply source, are examples of potential point source polluters. Contaminants from these uses may seep directly down through the soil to the water source.

Non-point source contamination is much more difficult to control because the cause of the problem may actually be located a considerable distance from the well. This type of contamination is caused by pollutants that filter into an underground aquifer and then migrate slowly through the groundwater aquifer to off-site wells and water sources. Prevention of this type of contamination must involve a collective effort on the part

of property owners and local officials from a large geographic area. It is the recommendation of this Plan that all existing and future wells be protected from both point and non-point source contamination to the greatest degree possible. It is also the intent of this Plan to recognize the importance of groundwater protection within the City of Hillisdale.

Urban Forestry

The City of Hillisdale has a long history of proper care and maintenance of its urban forest resource. Because of this long term dedication, the City of Hillisdale has been a Tree City USA community since 1977. With nearly 5,000 trees to maintain along its streets and within its parks, the City of Hillisdale is proud to be a member of the more than 3,400 cities nationwide that can call their city a Tree City. In order to become eligible for Tree City USA status, four standards, established by the National Arbor Day Foundation, must be met. They are:

1. A tree board or department.
2. A tree care ordinance.
3. A community forestry program with an annual budget of at least \$2.00 per capita.
4. An Arbor Day observance and proclamation.

Each quarter the Shade Tree Committee meets to discuss various tree related issues and provide input to the City Forester. In 1975 the city established its tree ordinance which became the groundwork master plan for the planting, maintenance, preservation and removal of city owned trees within the city and city parks. The intent of the ordinance is also to encourage the protection of trees, plants and shrubs to promote the city's aesthetic value. In addition, ordinances were established to seek restitution from individuals who engaged in the unauthorized removal of city owned trees or any damage thereof.

In 2010 the City of Hillisdale adopted the Public Tree Planting Program that allows interested individuals and businesses to purchase trees for the city to be planted in the city right of ways or city parks. The program also allows for residents or businesses to donate money towards the purchase and planting of trees as well. It is the goal of the City's Forestry department to plant a minimum of twenty (20) to thirty (30) trees

each spring based on the amount of funds available.

Planning Commission should consider developing a tree conservation program for private property.



Utilities and Transportation Master Plan

Utilities³

The Hillsdale Board of Public Utilities (BPU) has been the municipally owned and operated provider of electric, water and wastewater services to the City of Hillsdale and the outlying areas” since 1892.

Electricity

The Hillsdale BPU is a member of the Michigan South Central Power Agency (MSCPA) which provides power to five communities in the regions. The BPU provides electric power to nearly a third of Hillsdale County's residents in the following communities:”

- City of Hillsdale
- Communities of Osseo, Pittsford and Bankers
- Townships of Adams, Cambria, Jefferson, Hillsdale, Fayette and Pittsford
- The lake areas of” Barber, Baw Beese, Bear, Bel-Air, Cub, King and Wilson

Water and Wastewater

The Hillsdale BPU serves the City with quality drinking water and environmentally safe wastewater treatment. The City's water comes from deep and abundant aquifers located near the northern city boundary. The water system is looped with high capacity mains and two large water towers. The wastewater treatment plant meets the highest standards of environmental quality and safely discharges the treated water into the St. Joseph River. A state-of-the-art iron removal and water treatment facility prepares our drinking water for potable use. Please feel free to review our annual consumer report on the quality of our tap water. Only residents and businesses located within the City of Hillsdale may be connected to the BPU's mains.

³ Utilities information was obtained from the Hillsdale Board of Public Utilities' website, <http://www.hillsdalebpu.com/>.

Roads and Streets

The City of Hillsdale's street system can be broken into three classifications: State trunkline, Major streets, and Local streets. There is one state trunkline, M-99, which is the primary north-south entrance into Hillsdale. M-99 extends northward from Bacon Street along N. Broad Street and Will Carleton Road towards the City of Jonesville and into Jackson County, and south of Bacon Street along S. Broad Street, then east and south towards the State of Ohio. Just east of Hillsdale, M-99 adjoins with M-34, which extends east into Lenawee County toward the City of Adrian. The City of Hillsdale maintains two one-way streets: S. Manning which flows south from Bacon St., and West St. which flows north to M-99.

Major streets facilitate traffic flow in the area and typically connect local streets to the state trunkline. Some major streets in the City include: Carleton, Bacon, Hillsdale, Mechanic, Howell, State, Spring, Galloway, Wolcott and Reading Avenue. Mechanic Street is a major route to the industrial park, which is located in the northwest section of the City. Most of the other major streets are denoted "major" because they provide an entrance to the City for visitors who live outside the City. The third category, local streets, are comprised of all other streets with access to residences, etc. The Hillsdale street system is primarily a grid system.

The only major street re-construction project planned in the near future is that of State St. between Wolcott St. and the eastern city limit. The scope of the project includes: replacement of the paved street surface, drive approaches and installation of curb and gutter and sidewalk. Also included is the installation of a stormwater lift station to alleviate flooding of the adjacent area on N. Wolcott St. Funding for this project is provided through a State of Michigan Small Urban Grant along with matching funds from the City of Hillsdale.

The Baw Beese Trail is a non-motorized 10 foot wide asphalt path extending from the north at the intersection of M-99 and Arch Ave. then along the St. Joseph River towards downtown Hillsdale. From there the paved trail follows the former N.Y. Central Railroad right-of-way to the east and past the Baw Beese Lake park system. The City of Hillsdale owns the undeveloped railroad right-of-way that extends eastward between Sandy Beach Park and terminates at the west edge of the downtown area in Osseo MI. A second 'spur' of the Baw Beese Trail, named the KeeKoose Spur, extends to the northeast past KeeKoose Park from the downtown area. In the future, the hope is that these paths will be linked with other parks in the City along with

others in Hillsdale County to create a continuous linear park system. (See parks/path map) The bicycle route in the City of Hillsdale utilizes a designated curb-lane on city streets which 'loops' northward from the Baw Beese Trail between the downtown area and Hillsdale College. The streets used for this purpose include Oak St., College St. and N. Manning St. Designated bike routes could be added to M-99 to promote more bike travel between the Colleges and downtown.

Rail Transportation

The Indiana Northeastern Railroad operates Michigan Department of Transportation (MDOT) owned track in the City of Hillsdale and throughout Hillsdale County. This Michigan portion of the system extends from Ray, through Montgomery, Reading, Hillsdale, Jonesville and onto Coldwater. There is a branchline connection from Jonesville to Litchfield. The railroad currently serves no companies in Hillsdale, however the administrative office and some maintenance operations are housed in the city. The line provides shipment of grain, agricultural products, lumber, plastics, tallow, steel and flour. Indiana Northeastern Railroad is primarily a freight hauling railroad. A small passenger tourist operation that is based in Coldwater, Little River Railroad, does provide limited charter passenger service on the line.

Air Transportation

The Hillsdale Municipal Airport is a licensed public use/general utility airport located one mile east of the City at the intersection of State and Milnes Road. It has one 5,000 foot paved and lighted runway and is open year round. Recently, the FAA issued two new GPS based approach procedures that enable aircraft to access the airport in less than ideal weather conditions and do so at an increased safety margin. Additionally, the airport is equipped with an Automated Weather Observation Station that reports real time weather information to a display in the terminal building, to all incoming aircraft that are radio equipped and the National Weather Service.

A full parallel taxiway, new terminal building and ramp/hangar area is planned for the near future. The expansion project is on-going, with a partial taxiway and new entrance drive to be complete in 2016. Additional phases are projected through 2025. The estimated number of operations is 10,000 (take-offs/landings) per

year and growing. Usage is split evenly between recreational, private and corporate operators. Commercial use is primarily freight and charter service.

Public Transportation

Hillsdale Area Dial-A-Ride, operated by the City of Hillsdale, is the only public bus service in the City. This service runs within the Hillsdale City limits and is a demand response system with curb to curb service. Hours of operation are from 7:15 - 4:15 Monday through Friday.

There are four (4) lift equipped buses. Ridership in the 2014 fiscal year was 31,355, with winter months showing the highest use. School age children make up 45% of the riders; 35% are senior citizens and 20% are disabled.

Dial-A-Ride is an open door provider of public transportation responsible to the residents of the City of Hillsdale. The administrative offices and garage are located in the new facility completed in 2010. The offices are located at the west end of the Manufacturing and Technology Park at 981 Development Drive.



TO: Planning Commission

FROM: Zoning Administrator

DATE: March 19, 2019

RE: Tree Protection

Background: The Commission has discussed the desire to address protection of large established trees that become endangered through the development of public and private property. The City currently has a Municipal Tree ordinance in HMC Chap. 14.

https://library.municode.com/mi/hillsdale/codes/code_of_ordinances?nodeId=PTIICOOR_CH14EN_ARTIVMUTR

The Commission has discussed strengthening the ordinance to protect large trees on private property during the development of large scale projects. The Commission would also like to address the protection of large trees during development on public property. Mr. Laycock has included links to some information for review prior to continuing discussion.

<http://qcode.us/codes/napa/>

<http://www2.apwa.net/documents/about/coopagreements/urbanforestry/urbanforestry-3.pdf>

Also included is an existing ordinance from Farragut, TN near Knoxville.

Planning and Zoning Regulations and Tools

As the population and economy grows, communities across the country are growing too, and at a rapid rate. However, sometimes the success of a place can threaten the very reasons and resources that made it so attractive in the first place. Rapid development can lead to staggering losses of greenspace and urban and rural forest resources. Clear-cutting building sites for construction, accidental damage, utility excavation, road construction, land grade changes, and pollution from developing areas can destroy millions of trees each year. In response to this situation, communities turn their attention to a variety of planning and zoning tools to help guide and direct growth in a reasonable and fair way to achieve the greatest benefits for all. Commonly, tree protection and planting are made part of these tools.

Typically, planning and zoning regulations, plans, and guidelines are determined by and are the primary responsibility of the local or regional planning agency. However, public works departments often help enforce and inspect projects governed by these planning regulations. These regulations and tools can significantly affect the urban forest and are briefly described below.

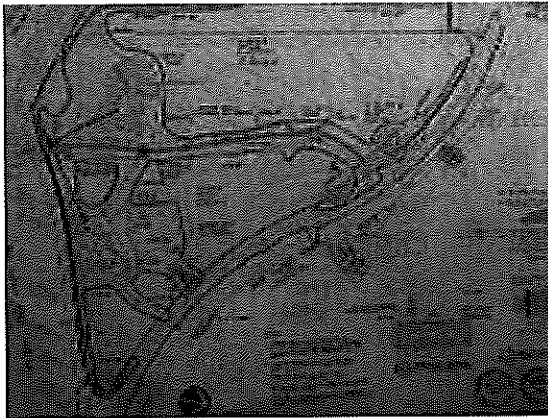
Comprehensive Plans

Comprehensive plans are typically developed at the local level by a county, township, or community. Comprehensive land use plans are an all-inclusive document that identifies a community's resources, both the natural and built environment, and plans for future growth and development. Generally, a community must establish a comprehensive plan prior to enacting zoning, subdivision, and land development regulations.

A comprehensive plan is typically a static document that establishes goals and policies for a community to implement over a ten- to twenty-year period, at which time a new plan is developed. Throughout the life of a comprehensive plan, it is usually reevaluated and updated to identify the progress a community has made in implementing the various goals and policies, to account for significant land development and changes, and to accommodate new goals of the community.

This plan can and does impact the management of the urban forest resources. A common component of a comprehensive plan is information on the location and quality of natural resources of the community. Based on that and other information, the plan can be developed to allow for some level of preservation and protection of the community's key natural resources.

Even though the responsibility of the comprehensive plan is primarily with the local planning agency, the public works agency responsible for the urban forest can and should participate in the development or updating process. A comprehensive plan usually documents a community's urban forest resources and identifies goals for preservation, enhancement, and even restoration. Public works managers can help establish goals for individual public street trees, privately owned trees, and large tracts of woodlands located in the community.



Zoning, Subdivision, and Land Development Regulations

Zoning, subdivision and land development regulations are important regulations that are routinely used by a community to control and guide the amount and type of growth occurring at any given time. Related to urban forest management, these regulations can address a number of issues:

- Land use
- Land disturbance mitigation
- Tree/forest cover requirements
- Erosion Control
- Replacement planting
- Tree protection

They can attempt to preserve tree canopy by requiring developers to submit detailed plats, construction, and development plans and documents indicating the presence of large diameter trees and groups of forest trees, identification of tree protection and tree preservation areas, and landscaping calculations.

Zoning, subdivision, and land development regulations are frequently amended and are considered living documents that are revised as the development climate changes, new building technologies are developed, and land and natural resource information is learned. Since they are often revised, it is important for public works managers charged with managing the urban forest to become informed and involved in the process.

Land Development Regulations often address many issues that are related to urban forest management:

- Site plan review
- Landscaping and tree cover requirements
- Tree protection
- Erosion and sediment control
- Storm water management

Public and Departmental Policies

Dictionary definitions of “policy” include “prudence or wisdom in the management of affairs;” “a definite course of action selected from alternatives;” and “a high level overall plan.” Especially for operational duties, like tree maintenance and planting, appropriate internal policies regarding urban forest management can aid in the development and sustainability of a program.

Without formal public policies authorized by the public works department head and/or council, or without administrative regulations and policies from the city or county manager, there may not be the framework and support for a coordinated, efficient, technically competent, and comprehensive urban forest management program. Clear and reasonable policies encourage independent departments, other governmental agencies, utility companies, businesses, and even the citizens to interact and function cooperatively with each other.

Without general guidance and cooperation, poor management can result in the form of inefficient duplication or overlapping of efforts, and/or the opposite, underlapping, where areas of responsibility and needs go unmet. The lack of public urban forestry management policies can allow agencies to operate with conflicting or inadequate urban

forest management standards. The lack of a policy also means there is no measure by which to judge the community’s actions as successes or failures.

Examples of urban forestry issues and responsibilities that might be the subject of official policies are:

- Criteria for public tree removal.
- Lists of approved and prohibited tree species that can be planted on public property.
- Planting site location standards to avoid conflict with utilities, sight distances, signs, and other potential obstacles.
- Use of current industry planting and maintenance standards for public works projects, private contractors, and citizens alike.
- Utility company activities
- Safe work practices and work sites.
- Interdepartmental plan review and approval and communication.

Without the need for complicated or unpopular legislation, the adoption and enforcement of various urban forest management policies and guidelines can support a change away from a problem-specific, crisis management, and reactive approach to a more proactive, professional

management response. The lack of such useful policy statements and guidelines can allow agencies to act independently without regard to efficiency or effectiveness, hinder attempts to coordinate the action of public agencies regarding the proper management of public trees, and can confuse interaction of the public works agency with citizens, businesses, utilities, and other outside entities when dealing with public trees.

Gaining Support and Acceptance for Urban Forest Regulations and Policies

An important element in the support and acceptance of urban forestry regulations and policies is education. Public works managers can work with other public agencies and citizens to educate and inform property owners, businesses, developers, and contractors how to best maintain their trees and forests, properly plant trees, and engage in development projects using methods that protect existing trees and forest tracts. There are many educational tools that are proven approaches to achieve buy-in by stakeholders regarding regulations, guidelines, and policies, and to ultimately protect urban and community forests.

Creating new policies means educating public staff about why the policies are needed and how the department and urban forestry program will benefit. Implementing tree ordinances, public tree maintenance and planting policies, tree protection and preservation guidelines, or other regulatory measures will require educating the citizens, public officials and developers about how to

comply with the existing or new requirements in a way that appropriately protects the resources while allowing use of the land and sustaining a healthy urban forest.

The topics of any educational efforts should range from the use of statistical and scientific data about trees and urban forests to more basic, consumer-oriented tree care, planting and benefits information. The educational efforts can be targeted to the following persons and groups in addition to public works staff:

- City Planners
- Building Inspectors
- City Advisory Commissions
- Contractors/Subcontractors
- Home/Property Owners
- Neighborhood Associations Developers
- Citizen Groups
- City Councils
- Utility Companies
- Realtors
- Architects/Landscape Architects

If you do implement new regulations and policies for the benefit of the urban forest, these educational tools may help in gaining acceptance and compliance in the community at-large:

- Workshops and training seminars with community leaders, advisory groups, contractors, homebuilders, and county and municipal staff.
- Publications, including direct mailings, newsletters, forestry and arboricultural handouts and brochures, and articles for the local print media. These publications

should be available in electronic format for use in direct e-mail responses and posting on websites.

- Awards and special events to recognize citizens, contractors, and other government departments who excel at tree preservation and reforestation or provide significant support to the public works agency; and local “Big Tree Contests” and Arbor Day events and programs to raise awareness of the urban forest in general.

Recommendations for Implementing Urban Forest Regulations and Policies

Creating and sustaining a comprehensive urban forestry program requires that many factors and resources be in place. Key components are regulatory tools and policy statements.

Typically, a community starts with “the basics” and then builds on those as the urban forestry program matures, more staff and resources are available, and the desires of the citizens and elected officials change.

The following recommendations are made to suggest a reasonable approach or order of implementing urban forest regulations and policies depending on whether you manage a new, developing, or established program.





Recommendations

New Program

1. Create and adopt a basic Public Tree Ordinance. Typical provisions included in a basic tree ordinance are: purpose; authority and power; limits of applicability; tree planting and maintenance and removal standards; enforcement; and penalties, claims, and appeals.
2. Create an advisory Tree Board/Commission to recommend policies and practices, and to be a liaison with the public and elected officials.
3. Include a section specifically for compensatory payment for damages to public trees. If an automobile accident occurs or a public tree is illegally and improperly pruned, the Town should collect damages from the responsible party to compensate for the corrective action needed and/or loss of the public tree. The Urban Forester should be designated as the authority to determine the appropriate amount using local standards or national standards, such as the formulas developed by the Council of Tree and Landscape Appraisers.

Developing Program

1. Review current public tree ordinance and make necessary amendments to be in compliance with current arboricultural standards; assure compatibility with other local ordinances; secure power to control safety risk and insect and disease problems on private property; define and expand duties and authority of the urban forest manager.
2. Formalize a 'Public Tree Work Permit' process in the public tree ordinance and/or within the current public works system. The permit process would require all parties, including other government units, utility companies, developers, and citizens, to submit a permit application and receive an approved permit before any public tree is pruned, removed, or planted.
3. Create a basic Tree Preservation and Protection Ordinance for public trees.
4. Become familiar with the existing local zoning, subdivision regulations, and landscape guidelines. Begin to interact with the controlling agency to coordinate and incorporate urban forestry program goals. Review any planting or maintenance specifications to ensure they meet current industry standards.

Established Program

1. Create a Tree Preservation Ordinance for private trees with clear procedures for protecting trees and forested areas during land disturbance or development, and with penalties for non-compliance.
2. Have direct authority and powers described within zoning and subdivision regulations for inspection and enforcement of tree and landscape requirements and issues; recommend the establishment of minimum canopy cover requirements for various land uses.

Be an active participant in each comprehensive plan review; request that the most current urban forest management plan be made a part of or referenced in the comprehensive plan

ARTICLE IV. - MUNICIPAL TREES^[3]

Footnotes:

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Editor's note— Ord. No. 2016-001, adopted March 7, 2016, amended article XIV in its entirety to read as herein set out. Former article XIV, §§ 14-101—14-116, pertained to similar material, and derived from the Code of 1979, §§ 12.16.020—12.16.070.

State Law reference— Municipal forests, MCL 324.52701 et seq.

Sec. 14-101. - Purpose and intent.

- (a) It is in the best interest of the city and the citizens and public thereof that a comprehensive master plan for planting and maintenance of city-owned trees be adopted, and that uniform and standard laws be adopted for the purpose of regulating, developing and providing for the planting, maintenance and removal of trees and stumps in any street, park or public place within the city, or under its jurisdiction and control, in order to better control problems of soil conservation, air pollution, and noise, and to provide necessary funding for a uniform, continuous city tree program for the purpose of beautifying the city and maintaining property values.
- (b) The intent of this article is to protect and encourage the protection of trees, plants and shrubs, to provide for public health, safety, and general welfare, and to promote and preserve the city's aesthetic value.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-102. - 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:

City forester means the designated official of the City of Hillsdale, lying within the County of Hillsdale, State of Michigan, assigned to carry out the enforcement of this article.

Department of public services means the department of the city government under whose jurisdiction city parks and/or street trees fall.

Diseased tree means a tree that is afflicted with any fatal or communicable disease .

Large trees are designated as those trees attaining a mature height of at least 45 feet or more.

Medium trees are designated as those trees attaining a mature height of at least 30 feet but no more than 45 feet.

Park includes all public parks of the city having individual names designated by the city.

Parkway means that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

Plants includes all "non-woody" vegetation now or hereafter growing on any public street, highway, alley, or public place.

Property line means the outer edge of a street or highway and does not pertain to the traveled pavement surface in itself.

Property owner means the person owning such property as shown by the records on file at the county register of deeds office.

Public places includes all other grounds owned by the city, lying within the county, or under the city's control or supervision whether owned, leased, or under contract of the city.

Public trees means all trees now or hereafter growing on any public right-of-way, park, or any other public places, except where otherwise indicated.

Public utility means any person or entity owning or operating any pole, line, pipe, cable, or conduit for the transmission of electricity, gas, telephone service or telecommunication service that is located in, under, or above any public street or over or along any public places, public easement, or right-of-way.

Right-of-way means any public street, highway, alley, boulevard, or avenue of the city, or any part thereof, and the land lying between the property lines on either side of all such streets, highways, alleys, boulevards, or avenues of the city.

Small trees are designated as those trees attaining a mature height up to 30 feet.

Street or highway means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

Trees and shrubs means all woody vegetation now or hereafter growing on any public parkway, park, right-of-way, or other public places.

Tree stump means the base part of a tree attached to the root(s), including any portion of the tree trunk, which remains after the tree has been cut.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-103. - Regulation generally.

The city council shall have full power and authority over all trees, plants, and shrubs existing or hereafter planted in any parkways, parks, rights-of-way, and public places of the city. The maintenance of such trees, plants, and shrubs shall be subject to the provisions of this article, and such rules and regulations as the city council may from time-to-time hereafter adopt, and as it deems necessary to properly control and regulate the planting, maintenance, protection, and removal of trees, plants, and shrubs on all parkways, parks, rights-of-way, and public places of the city.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-104. - City forester.

Subject to the approval and at the direction of the city council, the city manager shall designate a person to be known as the city forester whose duty it shall be, under the authority given by the city council, to superintend, regulate and encourage the preservation, culture and planting of shade and ornamental trees, plants, and shrubs, and to direct the method and time for trimming the same; to advise, without charge, owners and occupants of property located within the city regarding the kind of trees, plants, and shrubs and the method of planting best adapted to or most desirable on particular streets, public highways, and rights-of-way; and to take such measures as may be deemed necessary for the control and extermination of insects, pests and plant diseases which may injuriously affect trees, plants or shrubs that are now growing or may hereafter be growing in the parkways, parks, rights-of-way, and public places of the city.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-105. - Permits generally.

- (a) It is unlawful for any person to perform or undertake, or cause to be performed or undertaken, any work or activity covered by and included within this article without first filing an application for and procuring a permit from the city forester or his or her designated agent.
- (b) Every permit issued shall specifically describe the location and nature of the work or other activity to be performed under it and shall contain such other information as may be required by such regulations as may be hereafter adopted from time to time by the city council.
- (c) Any permit issued pursuant to the provisions of this article and in accordance with applicable regulations adopted by the city council shall automatically become null and void upon expiration of the permit period or at any time the permit holder violates the provisions of this article, the permit, or the regulations applicable thereto.
- (d) No charge shall be made for the issuance of any permit unless it is determined necessary by the city forester, or such person as he or she may designate, to assign an inspector to supervise the work or other activity to be performed under the permit to be issued. In the event an inspector is determined to be necessary, the department of public services shall determine the charge for such inspection services on an actual cost basis, and such actual cost shall be paid by the person seeking the permit as a prerequisite to its issuance.
- (e) Notice of commencement and completion of work or other activity authorized by the permit shall be made to the city forester as stated on the permit issued.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-106. - Permit required for installation of public utilities.

All permits issued for the installation of public utilities shall be certified by the director of public services or director of the board of public utilities. When a permit is given by the city forester to a telephone, telegraph, electric power, or other public service corporation or utility to trim trees, or perform other operations affecting public trees or shrubs, the permit authorizing such trimming or other activities shall be limited to that which is actually necessary to the maintenance of the service provided by such public utility; and such work shall be done in a neat and workmanlike manner and according to specifications outlined by the city forester.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-107. - Permit required for planting generally.

- (a) No trees, plants, or shrubs shall be planted in any of the parkways, parks, rights-of-way, or other public places in the city unless and until the city forester shall have first approved the kind, size, and variety of the same, designated the location thereof, and granted a permit for the planting of same.
- (b) Any trees, plants, or shrubs authorized for planting within the triangle formed by the intersection of right-of-way lines and extending for a distance of 25 feet each way from the intersection on any corner of any right-of-way within the city shall not be permitted to grow to a height of more than three feet above the surface of the intersecting rights-of-way.
- (c) Canopy trees may be maintained in the intersection site clearance triangle areas of rights-of-way provided that all branches are trimmed to maintain a clear vision for a vertical height of ten feet above the surface of the right-of-way.
- (d) The city forester shall have the authority to plant trees, plants, or shrubs in any parkway, park, right-of-way, or other public places in the city which he or she, in his or her sole discretion, deems suitable for the intended purpose.
- (e) No tree of any prohibited species shall be planted in any parkway, park, right-of-way, or public places, nor shall any such tree be planted on any private property within 50 feet of any parkway,

park, right-of-way, public places, or any sewer or sewer extension. Shade trees planted in any right-of-way shall be spaced according to applicable tables. The owner of a single lot may, in order to provide a shade or ornamental tree in the front of his lot, secure written permission from the city forester to have a tree planted closer than 40 feet from an existing tree, but in no case shall such planting be within 30 feet of any existing tree, within the right-of-way. No tree shall be planted in any right-of-way, less than two and one-half feet from any sidewalk, and trees on private property adjacent to any sidewalk shall be planted not less than three feet from the sidewalk.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-108. - Permit required for planting in new subdivisions.

- (a) The city forester may require street trees to be planted by the property owner, developer, or sub-divider on all parkways, parks, rights-of-way, and public places abutting lands henceforth developed and/or subdivided within the city. In such event, a proposed planting plan and permit application shall be submitted by the property owner, developer, or sub-divider to the city forester for approval and issuance of a planting permit prior to final plat approval by the city. The city forester shall provide planting specifications to the property owner, developer, or sub-divider of the proposed development and/or subdivision within seven days of receipt of a written request therefor.
- (b) The city forester, upon approval of the proposed planting plan, but prior to the issuance of a planting permit, may require the property owner, developer, or sub-divider to post a bond with the city for an amount equivalent to one-half of the total established value of the trees required by the city forester to be planted. Upon the provision of notification to the city forester of planting completion, and upon certification as to the satisfactory workmanship and completion of the tree planting, the city forester shall direct the city to release the bond.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-109. - Permit required for maintenance.

No person shall hereafter move, spray, brace, trim, do surgery work, or cut above or below ground any branch or root therefrom or otherwise disturb any tree, plant, or shrub in any parkway, park, right-of-way, or public places of the city, nor cause such acts to be done by others, without first obtaining a written permit from the city forester. The city forester shall issue the permit if in his or her judgment the proposed work is necessary and the proposed method of workmanship is of a satisfactory nature. The person receiving the permit shall abide by the specifications and standards of practice provided for in this article and shall abide by any regulation as may be hereafter from time-to-time adopted by the city council, and shall as a condition of such permit agree to hold the city harmless from any and all liability which might result from the work or activity authorized. In addition, the city forester may require the person receiving the permit to obtain or provide evidence of such insurance coverage of such types and in such amounts as the city forester deems to be reasonably necessary to protect the interests of the city.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-110. - Permit required for certain acts.

No person shall, without first obtaining a written permit from the city forester:

- (1) Fasten any sign, card, poster, wire, rope or other material to, around, or through, any tree, plant, or shrub or its guard;
- (2) Permit any fire to burn where such fire or its heat, smoke or fumes will injure any portion of any tree, plant, or shrub;

- (3) Permit any toxic chemical to seep, drain, or to be emptied on or about any tree, plant, or shrub;
- (4) Deposit, store, place, or maintain, on any parkway, park, right-of-way, or other public places, any brick, sand, stone, concrete, or other material which may impede the free passage of water, air, and fertilizer to the roots of any tree, plant, or shrub growing therein;
- (5) Fail to erect a suitable protective barrier around trees or shrubs apt to be injured during any building construction;
- (6) Fail to repair or stop any leak existing or occurring in any gas pipe or main within a radius of 40 feet of any tree or shrub;
- (7) Knowingly permit any electrical wires to come into contact with or be attached to any tree or shrub;
- (8) Excavate any ditches, tunnels, or trenches, or lay any drive within a radius of 30 feet from any tree or shrub;
- (9) Move any building or other large object along any right-of-way without furnishing any bond or cash deemed necessary and sufficient to cover damage potential damage to any trees or shrubs as a result of the moving;
- (10) Drive, park, haul, or store any automobile, truck, trailer, boat, motorcycle, snowmobile, motor home, or other motorized and/or wheeled vehicle within 25 feet of an existing tree in any parkway, park, right-of-way, or public place except while within the clearly delineated travel or parking zones of any such parkway, park, right-of-way, or public place. This shall not be construed as to preclude parking on any gravel, concrete, or bituminous driveway or entryway, or operating a motor vehicle on any gravel-surfaced right-of-way within 25 feet of such tree.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-111. - Conditional permit for removal of tree or shrub.

As a condition to any permit issued for the removal of any tree or shrub, the city forester shall require that the permit holder pay the current tree or shrub valuation and removal costs prior to commencement of the work.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-112. - Loss of public trees; value recovery.

- (a) Whenever the city forester shall determine that a tree in any parkway, park, right-of-way, or public place has been removed, or has been impaired, damaged, broken, severed, or destroyed, in a manner which will cause the need for the immediate or future removal of the tree, and which removal is deemed premature and untimely based on the condition, vigor, location, kind, and age of the tree, and the city forester has knowledge of the person causing the removal, impairment, damage, breaking, severance, or destruction, then the city forester shall assess against the responsible person the greater of:
 - (1) The value of the tree as determined according to the Michigan Forestry and Parks Association Shade Tree Evaluation Chart; or
 - (2) The cost of the removal and replacement of the tree with a comparable tree of not less than a three-inch trunk diameter measured at a height of six inches above the ground.
- (b) Nothing in this section shall be construed to restrict the city forester in his or her choice of an appropriate planting site for any replacement tree.

- (c) In the event the city police department or any other official or employee of the city obtains knowledge of any improper removal, impairment, damage, breaking, severing, or destruction of any tree, and/or of the identity of the person(s) causing the same, the city police department and/or such other city official or employee shall immediately report the information to the city forester for further investigation and/or action.
- (d) It shall be the duty of the city forester to notify the city manager and city attorney of any removal, impairment, damage, breaking, severing, or destruction of any tree that may result in the assessment of costs under this section.
- (e) The full amount of any costs assessed under this section shall be conveyed to the city forester for future tree planting purposes notwithstanding the deduction of the cost of the removal and replacement of the damaged tree.
- (f) The city forester shall determine the appropriate time for the removal and replacement of any tree as to which costs may be assessed under this section, and costs may be assessed regardless of whether the tree has been removed and/or replaced at the time of such assessment.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-113. - Abatement of infestations; entering private lands.

- (a) Any private lands within the city whereon insect pests and/or plant diseases may be found to have injuriously affected either the trees, plants, or shrubs located thereon or on any other private lands or public places within the city, or which may otherwise injuriously affect the public health, safety, and/or welfare of the inhabitants of the city, may be entered upon by the city forester or other authorized employees, agents, or contractors of the city to make field inspections, including, but not limited to, the removal of specimens for any laboratory or other analysis as may be necessary to determine the presence of the infestation or to locate any private lands which might serve as a breeding place for insects.
- (b) After determination of infestation, the city forester or other authorized employees of the department of public services may by written notice give the property owner a definitive time, but not less than ten days, to remove, treat, and dispose of the infested trees, plants, or shrubs. If the work is not satisfactorily completed by that time, then and in that case the city forester or other authorized employees, agents, or contractors of the city may enter upon the property and remove, destroy, and/or treat the infested area by any approved means or practice.
- (c) If the nature of the infestation for reasons of public health, safety, and/or welfare does not permit the affording of ten days' written notice to the property owner, the cost of the removal, destruction, or treatment of the infestation shall be borne by the city at large. In any case where after notice has been given to the property owner and the property owner refuses or neglects to remove, destroy, or treat such infestation, or cause the infestation to be removed, destroyed, or treated within 15 days after receipt of such notice, the city forester may, without further notice, cause the same to be done. In such case, all costs pertaining to the removal, destruction, or treatment of such infestation shall be paid from the city treasury, and the amount thereof shall be assessed against the property on the next general assessment roll of the city. Where definite ownership of the property cannot be established, or where proper notice cannot be given to the owner of the property, it shall be the duty of the city forester to cause the removal, destruction, or treatment of the infestation at the expense of the city.
- (d) In the event the city forester or those designated by him or her are refused admittance upon private property for the purpose of making the inspections contemplated by this section or for the purpose of removing, destroying, or treating infestations determined to exist thereon, application for an order requiring the occupant and/or owner of the property to permit such entry, inspection, removal, destruction, or treatment, and requiring such owner and/or occupant to cease and desist from interfering therewith may be sought in any court of competent jurisdiction.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-114. - Public nuisance.

- (a) Any tree, shrub, plant, or parts thereof growing upon private property but overhanging or interfering with the use of any parkway, park, right-of-way, or public place of the city that in the opinion of the city forester endangers the life, health, safety, welfare, or property of the public shall be declared a public nuisance.
- (b) Any tree, shrub, or plant growing on private property within the city afflicted with any dangerous and infectious insect infestation or tree disease shall be declared a public nuisance.
- (c) Any tree, shrub, or plant located in any public parkway, park, right-of-way, or public places that is afflicted with any dangerous and infectious insect infestation or tree disease shall be removed at city expense and under the direction of the city forester.
- (d) Whenever any public nuisance exists contrary to the provisions of any section of this article, the city forester or his authorized agent shall give written notice to the owner or occupant of the property or the owner's agent, describing the tree, shrub, or plant, its location, and the nature of the nuisance, and ordering the owner, agent, or occupant to take such measures as may be reasonably necessary to correct or cease such nuisance, specifying the measures required to be taken.
- (e) It is unlawful for any person to permit, cause, or suffer the existence of a public nuisance regarding any tree, shrub, or plant from and after 30 days following the date of the notice provided for in this section.
- (f) In any case in which a notice given under this section is not complied with, the city forester is authorized and empowered to order the removal or abatement of the public nuisance and, upon failure of the property owner, occupant, or owner's agent to comply with such order in accordance with its terms, the city forester shall have the authority to make application to any court of competent jurisdiction for an order requiring the property owner, occupant, or owner's agent to permit the city forester or those designated by him or her to enter upon such private property for the purpose of removing or abating the public nuisance, and further requiring such property owner, occupant, or owner's agent to cease and desist from interfering with such removal or abatement.
- (g) Any work contracted by the city forester for the removal or abatement of public nuisances shall be submitted for bids and approved by the city council.
- (h) Upon completion of the abatement or removal of the public nuisance, the city forester shall certify the cost of the removal of the public nuisance. The owner or other persons to whom the notice was directed shall be notified by mail of the removal or abatement, the cost incurred for such work, and a statement that the cost of the work must be paid within 30 days of the mailing of the notice, or the cost incurred will be assessed against the property at a regular meeting of the city council to be held not sooner than 30 days after the date of the notice.
- (i) It shall be the duty of the owner of the property or other person to whom notice was directed to pay the cost of such removal within 30 days after the date of mailing of the notice of completion, and in case of their failure to do so, the city shall have the right to make assessment by ordinance against the property for the purpose of collection in the same manner as general taxes are collected.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-115. - Private trees and shrubs—Clearance.

- (a) Every owner of any tree, plant, or shrub overhanging any 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 right-of-way intersection and so that there shall be a clear space of at least 16 feet above the surface of any street or highway, and at least eight feet above the surface of the remainder of any

right-of-way. Such owners shall remove all dead, dying, decaying, diseased, infested, or dangerous trees, or broken or decayed limbs or branches from trees where such limbs and branches overhang a parkway, right-of-way, or other public place, or which constitute a menace to the safety of the public. In the event that the city forester, city engineer, or the city engineer's designee determines that any tree, shrub, or plant located on private property interferes with the proper spread of light from a street light along a street or highway, interferes with the visibility of any traffic control device, or otherwise poses a threat to the safe use of any right-of-way by the public, the city shall have the right to enter upon said private property to trim or remove the offending tree, shrub, or plant as needed. Where practicable, the city shall give written notice by first-class mail, addressed to the property owner's last known address as shown by the records of the city assessor, and mailed at least five days prior to any trimming or removal activities.

- (b) All trees, shrubs, and plants located within the triangle formed by the intersection of right-of-way lines and extending for a distance of 25 feet each way from the intersection on any corner shall not be permitted to grow to a height of more than two and one-half feet above the grade at the edge of the pavement. Canopy trees may be maintained in the site clearance triangle areas provided that all branches are trimmed to maintain a clear vision for a vertical height of ten feet above the surface of the right-of-way. In the event that the city forester, city engineer, or the city engineer's designee determines that any tree, shrub, or plant located on private property is in violation of these restrictions, the city shall have the right to enter upon said private property to trim or remove the offending tree, shrub, or plant as needed. Where practicable, the city shall give written notice by first-class mail, addressed to the property owner's last known address as shown by the records of the city assessor, and mailed at least five days prior to any trimming or removal activities.
- (c) In the event the city finds it necessary to act under this section, the city forester shall cause an invoice for the costs of the work performed by the city to be mailed by first class mail to the owner of the property upon which the offending tree, shrub, or plant is located, which invoice shall be due and payable within 30 days. If the owner of the property fails to pay the invoiced charges within 30 days of the mailing of the invoice, the city may cause the cost reflected in the invoice to be assessed against the property as a special assessment, and the city may institute an action against the owner for the collection of the costs in any court of competent jurisdiction. However, the city's attempt to collect such costs shall not invalidate or waive any lien asserted or filed against the property.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-116. - Oak wilt prevention.

- (a) *Purpose.* The city has determined that the health of all species of oak trees within the city are threatened by the fatal disease known as oak wilt. Hazardous conditions resulting from the spread of the disease create the potential danger of windfall or other breakage of significantly weakened/dead standing trees situated in the vicinity of common property boundaries or common travel lanes. It has further been determined that the loss of all species of oak trees growing upon private and public property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the city council to prevent and control the spread of oak wilt and this section is enacted for that purpose.
- (b) *Painting of oak tree wounds.* Any person or entity that causes a wound to any species of oak tree, whether from ground-maintenance equipment, trimming, cutting, pruning, or otherwise, shall paint the wound immediately after it occurs with opaque latex paint. Painting of exposed oak roots is required by contractors making underground utility cuts and excavations where there are live oak roots larger than the size of a dime.
- (c) *Oak tree cutting and pruning.*
 - (1) From April 1 through October 15 of each year, no pruning or cutting of live branches of any species of oak tree is permitted except in emergencies.

- (2) Emergency pruning within the April 1 to October 15 time period is permitted to maintain necessary levels of safety, service, and reliability. If any emergency pruning is done, latex paint must be applied to the fresh wound. Situations where emergency tree pruning may be necessary include, but are not necessarily limited to, the following:
 - a. Storm-related damage to electrical facilities and/or adjacent trees has caused or could cause a power outage;
 - b. Bringing electrical service into a new residence or business;
 - c. Moving electrical facilities to accommodate road, pipeline, or building construction; and
 - d. Rebuilding or upgrading distribution facilities.
- (3) Cutting and removal of the entire tree for all species of oak trees is permitted provided that:
 - a. No standing oak trees of any species are damaged in the process; and
 - b. Stumps are cut as low to the ground as possible.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-117. - Severability.

If any section, subsection, sentence, clause, or phrase of this article is for any reason held to be invalid or unconstitutional by reason of a decision of any court of competent jurisdiction, such decision will not affect the validity of any other section, subsection, sentence, clause, phrase, or portion of this article.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-118. - Enforcement; interference with city forester.

No person shall prevent, delay, or interfere with the city forester or any of his assistants in the execution of enforcement of this article; provided, however, that nothing in this section shall be construed as an attempt to prohibit a public hearing or to prohibit an owner of any property within the city from pursuing any remedy, legal or equitable, in any court of competent jurisdiction for the protection of the owner's property rights.

(Ord. No. 2016-001, 3-7-2016)

Sec. 14-119. - Violation.

It shall be unlawful for any person or entity to violate any of the provisions of this article. Any person or entity convicted of violating any provision of this article shall be deemed guilty of a misdemeanor, and shall be deemed guilty of a separate offense for each and every such violation and for each and every day or portion thereof during which any such violation occurs or continues. Any person who violates this article shall be subject to the penalties for such violation in addition to the assessment of any costs as provided in this article. Any appraisal of the value of a tree under this article shall be performed by a state registered forester.

(Ord. No. 2016-001, 3-7-2016)

Secs. 14-120—14-140. - Reserved.

Chapter 113 - TREE PROTECTION

ARTICLE 1. - IN GENERAL

Sec. 113-1. - Definitions.

(a) Any word or term not defined within this section or in chapter 2 of the town zoning ordinance (appendix A to this Code) shall be construed to be used in this chapter as defined by the latest edition of Webster's Unabridged Dictionary. Any word or term not defined in the town's ordinance or the latest edition of Webster's Unabridged Dictionary shall have the meaning customarily assigned to it.

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

Area of disturbance means an area on an individual piece of property which is proposed to be altered by cutting and filling, building, roadway, and/or parking lot construction, the placement of utilities, and/or any other activities which could affect the survival of existing trees.

Caliper means the diameter of the stem of a tree as measured six inches above the ground for trees up to four inches in diameter and 12 inches above the ground for larger diameter trees. Caliper is used as a measurement standard for relatively small trees.

Certified arborist means a practicing arborist certified by the National Arborist Association.

Commercial logging and timber harvesting means the cutting and removal of trees from a site for commercial purposes, leaving the stump and root mass intact.

Construction activity means any activity which requires a site plan and/or a preliminary plat to be reviewed by the town municipal planning commission. Such activities might include, but not be limited to, the following: the construction of new buildings or expansions to existing buildings and the development of new roadways and other improvements.

Diameter-at-breast-height (DBH) means the diameter, in inches, of a tree trunk as measured 4½ feet above the ground. If the tree splits into multiple trunks below 4½ feet, the trunk is measured at its most narrow point beneath the split. Diameter-at-breast-height is used as a measurement standard for relatively large trees.

Dripline means a vertical line extending from the outermost portion of the tree canopy to the ground.

Environmentally sensitive areas means areas where tree removal could create adverse impacts on storm water runoff, erosion control and/or water quality. Such areas include, but are not necessarily limited to, mapped floodplains and wetlands, sinkholes, streamside management zones, areas adjacent to perennial, intermittent, and/or ephemeral streams, and/or steep slopes.

Ephemeral stream means a wet weather stream which flows in a diffuse manner and not within a well-defined channel. Such streams are created in response to a heavy rainstorm and continue only for a short period after rainfall ceases.

Forestry professional means a practicing forester with a degree in forestry from an accredited college or university.

Hazardous tree means a diseased, dead, structurally unsound, or otherwise unsafe tree that is likely to endanger the public, an adjoining property owner, and/or other trees. The term "hazardous tree" does not include trees which are otherwise healthy but which are made hazardous as a result of proposed construction or non-construction-related activities. Where a tree is questionable as to whether it is hazardous, a written determination shall be made by the town administrator or his designee in consultation with a certified arborist or forestry professional.

Intermittent stream means a stream which contains water within a well-defined channel that only flows temporarily following a major rainstorm or as long as the water table is elevated.

Invasive exotic pest tree means any tree which is included on the "Invasive Exotic Pest Plants in Tennessee" list which is maintained by the research committee of the state exotic pest council.

Land disturbance permit means a permit issued for a proposed activity which would lead to the removal or disturbance of existing tree cover, including clearing and grubbing operations, but would not involve the alteration of the prevailing topography.

Licensed landscape architect means a current state-licensed landscape architect, as defined by the state board of architecture and engineering examiners.

Natural regeneration means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

Non-construction activity means any alteration of the natural environment which would involve the removal or destruction of any tree protected in this chapter but which is not in association with a site plan and/or preliminary plat required to be reviewed by the town municipal planning commission.

Perennial stream means a stream which contains water within a well-defined channel the majority of the year.

Public tree means a tree growing on land owned by a unit of government (federal, state, county, town, or any agency thereof).

Replacement tree means any tree planted on a site to replace a protected tree which has been removed or destroyed as a result of construction and/or non-construction activities.

Specimen tree means a particularly impressive or unusual example of a species due to its size, shade, shape, age, or any other trait that, in the opinion of the professional responsible for preparing the tree preservation/removal plan, epitomizes the character of the species.

- (1) The term "tree" includes, but is not necessarily limited to, the following:
 - a. Any nonhazardous tree which has a particularly uncommon or widely valued characteristic and which has a DBH of more than 24 inches;
 - b. Any nonhazardous tree which has been declared as rare or endangered by an agency of the state or federal government and which is protected by the laws of the state or the laws of the United States; and/or
 - c. Any tree which is associated with a historic event or historic structure or is otherwise commonly recognized within the community to have historical significance.
- (2) Where a tree is questionable as to whether it is a specimen, a written determination shall be made by the town administrator or his designee in consultation with a certified arborist or forestry professional.

Streamside management zone (SMZ) means an undisturbed strip of land between a disturbed area and a body of water. The primary purpose of an SMZ is to protect stream banks and channels from disturbance by equipment and prevent eroded materials from entering water courses. The minimum width for an SMZ shall be 25 feet. However, a greater width may be required depending on the slope of the land between the proposed disturbed area and the stream. The state department of agriculture, division of forestry, best management practices shall be referenced to determine appropriate SMZ widths.

Tree means any self-supporting woody plant which is capable of growing to a height of 15 feet or more and which usually provides one main trunk and produces a more or less distinct and elevated head with many branches.

Tree cover means the area directly beneath the crown and within the dripline of a tree.

Tree farming means and includes nursery stock trees for resale in commercial nurseries or garden centers and trees specifically grown to be harvested as Christmas trees.

Tree regeneration means the act of re-creating a stand or entire forest by replacing older trees with new trees.

Sec. 113-2. - Penalties.

- (a) At a minimum, where any protected tree is removed without first obtaining the required permission, such tree shall be replaced with a tree approved by the town staff. The required minimum number of replacement trees shall be equal to, in caliper inches, the caliper inches of the tree or trees removed.
- (b) In addition, any person, firm, partnership or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.
- (c) The foregoing provisions relative to replacement trees and fines shall not in any way prevent the town from also issuing stop work orders, withholding inspections, cashing bonds or letters of credit, or seeking injunctive relief against a violator of this chapter.

Sec. 113-3. - Purpose and intent.

- (a) The purpose and intent of this chapter is to promote the health, safety, and public welfare of the inhabitants of the town and, consistent with forestry policy and practice as promulgated by the department of agriculture, division of forestry, of the state, to promote and encourage the protection of existing trees and root systems; to regulate the preservation, replacement, and indiscriminate removal of trees; and to establish procedures and practices and minimum design standards for fulfilling these purposes.
- (b) The standards established herein are intended to: promote air quality; reduce noise, heat and glare; lessen soil erosion and minimize flooding; ensure that development activities in one area do not adversely affect activities within adjacent areas; minimize the unnecessary removal of trees during development; stress the importance of trees as a visual screen; promote the development of open space corridors for wildlife and recreational activities; beautify and enhance improved and unimproved land; promote the preservation of the town's historical "rural community" heritage; and, minimize the cost of construction and maintenance of drainage systems necessitated by increased flow and diversion of surface waters.

Sec. 113-4. - Applicability.

The following activities shall be considered exempt from the requirements of this chapter:

- (1) The construction of individual single-family detached and two-family dwelling units on individual lots;
- (2) Provisions for utilities and vehicular and pedestrian ways within platted easements and rights-of-way;
- (3) Removal of hazardous trees;
- (4) Removal of invasive exotic pest trees;
- (5) Activities conducted by an owner on his lot of residence (this does not, however, include the removal of more than one acre of tree cover within a consecutive three-year time period); and
- (6) Tree farming.

Secs. 113-5—113-26. - Reserved.

ARTICLE 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 113-27. - Permit issuance.

- (a) *Grading permit.* For purposes of compliance with this article, a grading permit, as provided for in chapter 111 shall be issued when a tree preservation/removal plan has been approved, all tree protective and erosion control measures are in place and have been inspected and approved by the town staff, and, unless waived by the town administrator or his designee, a pre-construction conference has been conducted.
- (b) *Land disturbance permit.* For tree removal activities which do not involve grading, a land disturbance permit shall be issued once a tree preservation/removal plan has been approved, all tree protective and, if necessary, erosion control measures are in place and have been inspected and approved by the town staff, and a tree replacement bond or irrevocable letter of credit has been provided to ensure that any required replacement trees will be planted. The dollar amount for this bond or irrevocable letter of credit shall be determined by the town administrator or his designee based on the approved tree replacement or regeneration plan.

Sec. 113-28. - Authority to enforce provisions.

The provisions of this chapter shall be administered and enforced by the town administrator or his designee.

Secs. 113-29–113-59. - Reserved.

ARTICLE 3. - TREE PRESERVATION/REMOVAL PLAN

Sec. 113-60. - Trees protected.

The following protected tree groups, as identified from the inventory requirements of this article provided for in section 113-61, shall not be removed or otherwise destroyed without first obtaining approval of a tree preservation/removal plan from the town planning commission (FMPC) or, where applicable, the town administrator or his designee:

- (1) Any hardwood tree which has a DBH of ten inches or greater, any evergreen tree which has a DBH of 15 inches or greater, and/or any dogwood (*Cornus florida*) or redbud (*Cercis canadensis*) which has a caliper of more than four inches, except as provided for elsewhere in this article;
- (2) Any specimen tree;
- (3) Any dogwood (*Cornus florida*) or redbud (*Cercis canadensis*) which has a caliper of more than four inches;
- (4) Any public tree;
- (5) Any grouping of trees which are significant by virtue of their size, species, location, appearance, or other distinguishing feature, characteristic, or function; and/or
- (6) Any trees located within environmentally sensitive areas.

Sec. 113-61. - Review process and application requirements.

(a) *Tree preservation/removal.*

- (1) When an activity requires the submission of a preliminary plat or a site plan to be reviewed by the FMPC, a tree preservation/removal plan shall be provided and shall, at a minimum, include the following:
 - a. The name and location of the project;
 - b. A north arrow and a written and graphic scale;
 - c. The name, address, telephone number, and seal or statement of professional qualifications of the professional responsible for the preparation of the plan;
 - d. An indication of proposed improvements and the proposed area of disturbance;
 - e. The general location and approximate square footage and acreage of all covered areas;
 - f. The approximate density, predominant species, general distribution of predominant species, and predominant level of maturity of trees within all tree covered areas. Maturity levels shall be classified as follows:
 1. Young stands would be used where the predominant tree cover is from trees that are less than six inches at DBH;
 2. Intermediate stands would be used where the predominant tree cover is from trees that are six to ten inches at DBH; and
 3. Mature stands would be used where the predominant tree cover is from trees that are greater than ten inches at DBH;
 - g. The species, exact location, as determined by a licensed surveyor, and size of any hardwood tree which has a DBH of ten inches or greater, any evergreen tree which has a DBH of 15 inches or greater, and/or any dogwood (*Cornus florida*) or redbud (*Cercis canadensis*) which has a caliper of more than four inches. Such trees shall be shown only if they are within and/or 25 feet beyond the proposed area of disturbance.
 1. In association with a preliminary plat or a tract which is part of a site plan submittal and that is densely wooded with more than half of the non-buffer portion of the tract in tree cover, such trees, unless they are classified as specimen trees, shall not be required to be individually identified. In such cases, replacement trees shall still be provided as outlined in section 113-64.
 2. The description of the affected tree cover areas, however, must be very detailed and accurate and include, at a minimum, the information noted in subsection (a)(1)f of this section.
 3. The objective of the inventory is to identify the most and least desirable tree cover on the property to see if the site design can in some fashion capitalize on what the property has to offer.
 - h. The species, exact location, as determined by a licensed surveyor, and size of any specimen tree which is within and/or 25 feet beyond the proposed area of disturbance;
 - i. An indication of whether an identified tree is proposed to be saved or is proposed for removal;
 - j. An indication of those trees which are considered to be hazardous;
 - k. The location of any environmentally sensitive areas;

- l. The location of any required buffer strips;
 - m. A detail and an indication of the location, height, and material used for tree protective fencing;
 - n. An indication, including, where applicable, a detail of any other tree protective measures, such as dry wells, retaining walls, mulched aisle ways, etc.;
 - o. Proposed location for temporary construction activities such as equipment or worker parking, materials storage, burn holes, and equipment wash down areas; and
 - p. A written indication of any treatments, pruning, or other measures which may be needed to promote the preservation of an existing tree.
- (2) In all cases, the tree preservation/removal plan shall be consistent with other subdivision and site development elements, such as stormwater and erosion control measures, proposed grading, and utility provisions which are included as part of the preliminary plat or site plan. Where such consistency is in question, the applicant may be required to overlay these other site development elements onto the tree preservation/removal plan.
 - (3) The tree preservation/removal plan shall be prepared by either a licensed landscape architect, a certified arborist, a forestry professional, or any other person with proven equivalent qualifications based on the nature and scale of the proposed project.
- (b) *Landscaping.* In addition, where a landscape plan is required per the town zoning ordinance (appendix A to this Code), the number, species, size, and location of any replacement trees and/or existing trees to be saved must be included as part of the landscape plan. In all cases, in terms of the trees shown to be either removed or saved, the information shown on the landscape plan shall be consistent with the approved tree preservation/removal plan. A tree replacement/credit summary, as provided for in this article, shall be included on both plans.
 - (c) *Administrative review.* Where the removal of protected trees is not associated with a construction-related activity, such removal shall only be permitted if a tree preservation/removal plan is approved by the town administrator or his designee. If the scale of the proposed removal is deemed to be significant, the town administrator or his designee may require the plan to be reviewed by the FMPC. In all cases, the applicable information noted in this article shall be provided on the plan.

Sec. 113-62. - Approval/denial of application.

- (a) *Approval.* A tree preservation/removal plan may be approved if it can be determined that:
 - (1) The plan is consistent with stormwater, erosion, and sedimentation control measures which are in accordance with chapter 111.
 - (2) Where commercial logging and timber harvesting are involved, the plan is, at a minimum, in accordance with the state department of agriculture, division of forestry, best management practices (BMPs);
 - (3) The plan addresses the preservation of existing trees;
 - (4) The plan provides for sufficient and timely replanting of trees, where required, to compensate for the removal of trees and other vegetation; and
 - (5) The applicant intends to complete the proposed activity within a reasonable time frame, determined by the size of the development, and will take steps to prevent any negative impacts resulting from the work proposed.
- (b) *Denial.* A tree preservation/removal plan may be denied where:
 - (1) In association with a site plan, less than 15 percent of the existing tree cover, not counting any buffer strips required per the town zoning ordinance (appendix A to this Code), would remain;
 - (2) In association with a preliminary plat, tree removal is proposed beyond the area reasonably necessary for cut and fill associated with provisions for on-site public improvements and/or the installation of utilities;

- (3) For non-construction related activities, the removal of over 50 percent of a site's protected trees, not counting any required buffer strips, is proposed;
 - (4) A specimen tree which could reasonably be saved is proposed for removal;
 - (5) Obvious problems related to storm water runoff, erosion, and siltation would result;
 - (6) Tree removal is proposed in environmentally sensitive areas;
 - (7) Where commercial logging and timber harvesting are involved, proposed tree removal is not in accordance with established state department of agriculture, division of forestry, best management practices (BMPs);
 - (8) The extent of clearing would result in obvious damage to the property of others;
 - (9) The proposed activity could be reasonably conducted in a manner which would better preserve existing trees and/or further promote the intent of this article; and/or
 - (10) Tree removal activities are otherwise inconsistent with the purpose and intent of this article.
- (c) *Period to grant, deny or approve.* Upon initial presentation, the FMPC, town administrator and/or his designee shall have 45 days to grant, deny, approve, or approve with conditions, restrictions, limitations, or alterations such tree preservation/removal plans in conjunction with the preliminary plat, site plan, or landscape plan. In the event that an application is denied, the specific reasons for denial shall be set forth in writing and a copy of same shall be forwarded to the applicant.

Sec. 113-63. - Appeal.

Any applicant or aggrieved party with legal standing may appeal any decision or action of the FMPC or town administrator or his designee to the town board of mayor and aldermen (FBMA). Such appeal, however, must be submitted in writing to the town recorder within 30 days of the decision or action in question. Upon receipt of an appeal, the FBMA shall have 45 days to affirm, reverse, or modify a decision of the FMPC, town administrator or his designee.

Sec. 113-64. - Tree replacement provision.

- (a) Where the FMPC or the town administrator or his designee has approved the removal of an existing healthy, nonhazardous hardwood tree with a DBH of ten inches or greater and/or an existing healthy, nonhazardous evergreen tree with a DBH of 15 inches or greater, a replacement tree shall be provided based on the following schedule:

Tree Replacement Schedule

Size of Tree Proposed for Removal	Number of New Trees Required
10-inch to 15-inch DBH	Two
Between 16-inch and 20-inch DBH	Three for a hardwood tree removed; 1½ for an evergreen tree removed
> 20-inch DBH	Four for a hardwood tree removed; two for an evergreen tree removed

- (b) Replacement trees shall also be required where the FMPC, town administrator or his designee has approved the removal of existing healthy, nonhazardous dogwoods (*Cornus florida*) or redbuds (*Cercis canadensis*) which are greater than four inches in caliper. If the dogwood or redbud to be removed is ten inches or more at DBH, the number of required replacement trees shall be based on the above tree replacement schedule. If the dogwood or redbud is less than ten inches at DBH, the caliper inches of such tree shall be added to the caliper inches of other dogwoods and redbuds to be removed and which are less than ten inches at DBH and a replacement tree shall be required for every ten cumulative inches of caliper to be removed. Where the resultant required number of replacement trees contains a fraction, any fraction less than one-half may be dropped and any fraction one-half or more shall be counted as one replacement tree.
- (c) For preliminary plats and those site plan tracts where an inventory of individual non-specimen protected trees is not required, replacement trees shall be provided based on the tree cover identified using the parameters provided for in section 113-61(a)(1)f. Tree covered areas identified as young stands shall require one replacement tree for every 7,500 square feet identified. Tree covered areas identified as intermediate stands shall require one replacement tree for every 5,000 square feet identified. Tree covered areas identified as mature stands shall require one replacement tree for every 2,500 square feet identified.
- (d) Where replacement trees cannot be reasonably accommodated on the subject property, the developer shall be required to dedicate the excess required replacement trees to a public property approved by the town administrator or his designee.

Sec. 113-65. - Tree credit provision.

- (a) An existing healthy, nonhazardous tree to be saved and which has a DBH of ten inches or greater and is located within an approved area of disturbance or an area on the same parcel adjacent to and up to 25 feet beyond the approved area of disturbance and which is not located within a required buffer strip may be credited toward fulfilling a portion of the non-buffer strip landscaping requirements specified in the town zoning ordinance (appendix A to this Code). Tree credits shall be based on the following schedule:

Tree Credit Schedule

Size of Existing Tree to be Saved	Credited Number of New Trees
10-inch to 15-inch DBH	Four for a hardwood tree saved; two for an evergreen tree saved
Between 16-inch and 20-inch DBH	Six for a hardwood tree saved; three for an evergreen tree saved
> 20-inch DBH	Eight for a hardwood tree saved; four for an evergreen tree saved

- (b) The preservation of clusters of healthy, nonhazardous hardwood trees, particularly dogwoods (*Cornus florida*) and redbuds (*Cercis canadensis*), which are less than ten inches at DBH but more than four inches in caliper and are located within an approved area of disturbance or an area on the same parcel adjacent to and up to 25 feet beyond the approved area of disturbance and which is not

located within a required buffer strip may also be credited toward fulfilling a portion of the non-buffer strip landscaping requirements. For every five caliper inches preserved, a credit may be given toward the planting of one new tree. Where the resultant number of credited trees contains a fraction, any fraction less than one-half may be dropped and any fraction one-half or more shall be counted as one credited tree.

- (c) In all cases, trees proposed for credit must comply with all applicable provisions specified in this article. In addition, the minimum required number of front yard shade trees and the number of trees needed to meet the minimum spacing requirement between shade trees and new parking spaces, as provided for in the landscaping requirements in the town zoning ordinance (appendix A to this Code), must be met independently.

Sec. 113-66. - Tree conservation and landscaping requirements.

- (a) Should the number of required replacement trees exceed the number of credited trees, the difference shall be planted as an addition to the number required per the landscaping requirements specified in the town zoning ordinance (appendix A to this Code). However, such replacement trees shall not be required in excess of 20 percent of the total number of non-buffer strip trees needed to fulfill the landscaping requirements. All required replacement trees shall meet the minimum size requirements for canopy trees, as specified in the landscaping requirements. Such species and their proposed location shall be shown on the landscape plan.
- (b) Should the number of credited trees exceed the number of required replacement trees, such trees may count toward replacing up to one-half of the required number of non-buffer strip trees.
- (c) Any tree which is to be saved and which does not survive the two-year time frame of the landscape maintenance bond required per the town zoning ordinance (appendix A to this Code) shall be replaced based on the requirements specified in this article. Should the health of a tree be in question, no landscape maintenance bond, letter of credit, or similar surety will be released until a letter is provided by a certified arborist or forestry professional which states that the tree is healthy and will likely survive.

Sec. 113-67. - Tree replacement for non-construction activities.

- (a) For nonconstruction activities, a plan for tree replacement shall be presented to the town administrator or his designee. Replacement trees shall be provided per the requirements specified in this article and shall meet the minimum size requirements for canopy trees specified in the landscape requirements of the town zoning ordinance (appendix A to this Code).
- (b) Where land is to be reused for commercial logging and timber harvesting, an alternate plan involving natural or other forms of tree regeneration may be considered if such a plan is prepared and recommended by a forestry professional. At a minimum, the plan shall clearly promote the purpose and intent of this article and shall be in accordance with the state department of agriculture, division of forestry, best management practices.

Sec. 113-68. - Standards for crediting existing trees.

Existing trees will only be credited as fulfilling landscaping requirements where such trees meet the following minimum specifications:

- (1) They are healthy, safe, and meet the size, location, and other applicable provisions of the landscaping requirements;
- (2) They are comparable, in terms of species classification and general characteristics, to new trees that would be permitted in the proposed location per the landscaping requirements specified in the town zoning ordinance (appendix A to this Code); and

- (3) They do not and are not likely to interfere with existing or planned utilities or vision clearance standards.

Sec. 113-69. - Tree protective measures.

Where any tree and/or grouping of trees are to be saved, the following minimum preservation measures shall apply:

- (1) Protective fencing shall be located to correspond to the existing drip line of the individual tree or clusters of trees to be protected;
- (2) Protective fencing shall be at least three feet high, upright and highly visible, and shall be constructed of a durable material that will last until construction is completed. Throughout the construction process, the tree fencing shall remain undisturbed and no activity or storage of any materials or vehicles shall be permitted within the fenced area; and
- (3) Where trees are to be removed, such trees shall be flagged and shall be felled away from, rather than into areas with existing trees to be preserved.

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As used in Chapters 12.44 and 12.45, the words below shall have the following definitions, unless the context specifically indicates otherwise:

“Commission” means the Tree Advisory Commission for the city.

“Department” means the Community Resources Department of the city.

“Director” means the Director of Community Resources for the city.

“Drip line area” means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

“Hazardous tree, shrub or plant” means any tree, shrub or plant, or portion thereof that poses a hazard to person or property. A tree, shrub, or plant may be deemed a hazard if it or any part of it: (1) appears dead, dangerous, or likely to fall; (2) obstructs a street or sidewalk; (3) harbors a serious disease or infestation threatening the health of other trees, shrubs or plants; (4) interferes with vehicular or pedestrian traffic; or (5) poses any other significant hazard as set forth in regulations promulgated by the Director pursuant to this chapter.

“Injure” or “injury” means any act which damages a tree including, but not limited to, cutting, carving, transplanting, injurious attachment of any rope, wire, nails, advertising posters, or other contrivance to any tree; allowing any gaseous, liquid, or solid substance that is harmful to trees to come into contact with them; setting fire or permitting any fire to burn when such fire or the heat therefrom will injure any part of any tree; knocking over any tree; or damage inflicted upon the root system of a tree by the application of toxic substances, the operation of heavy equipment, the change of natural grade above or below the root system or around the trunk of a tree.

“Landscape material” means any tree, shrub, groundcover or other plant.

“Maintenance” means pruning, trimming, mulching, clipping, watering, staking, spraying, weeding, fertilizing, bracing, treating disease or injury, and any other acts which promote the life, growth, health, or beauty of the city’s trees or landscape material placed in the city right-of-way.

“Planting” means putting or setting into the ground or into a container to grow.

“Removal” means any intentional or negligent injury, which causes a tree or landscape material to die.

“Replacement value” means the actual cost to the department of replacing a tree or landscape material removed or destroyed or if irreplaceable, its value as determined pursuant to the “basic value” or “square inch formula” adopted by the Council of Tree and Landscape Appraisers, as amended from time to time.

“Right-of-way” means the area upon which a street or sidewalk passes as defined in Section 10.40.010 of the municipal code.

“Significant tree” means a tree possessing special qualities and so designated pursuant to Section 12.45.020 of this chapter.

“Street tree” means any tree within the public right-of-way.

“Tree” means any large perennial plant having a woody trunk(s), branches, and leaves.

“Tree Advisory Commission” or “Tree Commission” means a commission of private citizens appointed by the City Council as set forth in Section 2.80.020 of the municipal code.

“Urban forest” means all trees on lands within the borders of the city subject to the jurisdiction of the community resources department. (O92-004 3; O1999 42)

12.44.020 Jurisdiction.

The Department shall have jurisdiction over the planning, planting, maintenance, and removal of all street trees; over any landscape material in any street median and center strip, and over trees and other landscape material in other public spaces under the jurisdiction of the Department. (O92-004 3)

12.44.030 Planting and removal of street trees—Permit required—Appeals—Removals by city.

A. Permits. It is unlawful for any person to plant, injure, or to remove a street tree without a valid permit for such work issued by the Director. Any person who desires a permit shall apply to the Department on the designated form. All tree removal and tree planting shall conform to specifications established by the Department.

1. All work performed on street trees, pursuant to a permit issued by the Director under this section, shall be done within a 60-day period from the issuance of said permit or within such longer period as the Director shall specify;
2. The Director shall condition any permit granted pursuant to this chapter for the removal of a street tree on the permittee removing, and where the director determines it to be appropriate, replacing the tree. In such case, the full cost of removal and replacement shall be borne by the owner, and such service shall not be provided by the city;
3. The Director may condition any permit granted pursuant to this section on any such conditions as the director determines to be necessary;
4. The Director may require from any person receiving a permit, security in an amount sufficient to secure the performance of all conditions, which may be placed upon the issuance of such permit, and as a deposit for possible damages to street, curb or sidewalk during the performance of such work;
5. The Director is authorized to establish a list of trees appropriate for planting along city streets. Only those trees designated by the Director shall be planted.

B. Appeals. Any affected party may appeal a permit decision of the Director to the Tree Commission within 10 calendar days of issuance or notification of denial. After considering the action of the Director and hearing the appeal, the Commission shall approve, modify, or overrule said action. Appeals of a Tree Commission decision may be made to the City Council within 10 calendar days of the Commission's action.

C. Removals by City. The Director may remove or cause to be removed any hazardous tree, hedge, shrub, or plant from any city property or within a public right-of-way or where necessary for any engineering reason. (O92-004)

12.44.040 Protection of trees and landscape material.

A. Injury to or Destruction of Trees Prohibited. It is unlawful for any person to injure, destroy or remove any street tree or any tree on city property unless the Director authorizes removal of the tree or removal is authorized by a permit issued pursuant to Section 12.44.030 of this chapter. No person

without the approval of the Director shall place or maintain any stone, cement, plastic, or other substance within 20 inches of the trunk of any street tree or tree on city property which impedes the free access of water or air to the roots.

B. Injury to or Destruction of Landscape Materials Prohibited. It is unlawful for any person to injure, remove, or destroy any landscape material in any street median, center strip, or other publicly landscaped portion of a public right-of-way or landscape easement under the city's jurisdiction, except as authorized by the Department.

C. Construction Work—Protection of Trees Required. It is unlawful for any person to engage in any construction work without first taking steps to protect street trees from injury or from damage to trunk, branches, or roots, or damage caused by soil compaction or contamination. All street trees or trees on city-owned property that are near any excavation or construction shall be adequately protected in accordance with guidelines established by the department including, but not limited to, protection of the trunk, bark, leaves, scaffold branches, and soil. Removal of a street tree is authorized only by permit obtained pursuant to Section 12.44.030. (O92-004; O1999 42)

12.44.050 Maintenance of street trees—Responsibilities of property owners—Pruning permit required—City maintenance.

A. Property owners shall be responsible for the routine maintenance of all street trees fronting their properties, whether or not planted by the Department, including watering and weed control as needed, removal of tree-well trash, and reporting to the Department in a timely manner any damage to or condition of the tree which may be hazardous to the health of the tree or the public. Pruning may be done by property owners providing it is done to city specifications and with a valid permit.

B. It shall be the duty of the property owner to notify the Director of any hazardous street trees adjacent to his or her property.

C. It is unlawful for any person to prune a street tree without a valid permit for such work issued by the department. Pruning shall include root pruning within the street right-of-way. Any person who desires a permit shall apply to the department on the designated form. All pruning shall conform to standards established by the Department.

D. The Department is authorized to prune all street trees or trees on city property. Pruning will be accomplished using the best practices of professional arboriculture. The Department is authorized only to prune to remove hazards unless the tree(s) is/are within a specific area of the city scheduled for annual program pruning as authorized by the Director, in which case trees may be pruned for health, natural shape and balance as well as for hazard removal.

E. The topping of any street tree or tree on city-owned property is prohibited as a normal practice. Topping is defined as the cutting of the branches and/or trunk of a tree in a manner, which will substantially reduce the overall size of the tree area or destroy the existing symmetrical appearance or natural shape of the tree. Trees severely damaged by storms or other causes or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted at the discretion of the Director.

F. The city is not authorized to prune any tree or limb within 10 feet of any electrical or phone line. Local utility companies shall be responsible for clearing hazards from their lines. A permit for pruning by utility companies for line clearance shall be required as per subsection C of this section.

G. Tree maintenance practices by the Department may also include, but need not be limited to: routine adjustment, replacement and removal of tree stakes, ties, tree guards, and tree grates; replacement of missing or damaged trees; pest and disease management procedures; and root pruning.

H. Property owners shall be responsible for the complete maintenance of landscape material, other than street trees, planted in the right-of-way adjoining their property. Property owners shall also be responsible for weed abatement in the right-of-way areas adjoining their property.

I. Landscape material, other than street trees, planted in the right-of-way shall not exceed two feet in height and shall not be allowed to grow onto or obstruct sidewalks and streets. (O92-004; O1999 42)

12.44.060 Interference with planting, maintenance and removal prohibited.

No person shall interfere with the Director of Parks and Recreation or persons acting under his or her authority while engaged in any tree maintenance activity, including pruning, mulching, watering, staking, spraying or the planting or removal of any tree or landscape material in any right-of-way, park or city-owned property. (O92-004)

12.44.070 Violation—Penalties.

- A. Violation of any of the provisions of this chapter shall be chargeable as a misdemeanor.
- B. In addition to the penalty set forth in subsection A of this section, violation of any section of this chapter shall be the basis for injunctive relief. (O92-004)

12.44.080 Enforcement.

The Director is charged with the responsibility for the enforcement of Chapters 12.44 and 12.45 and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the City Attorney is authorized to institute appropriate proceedings to that end. (O92-004)

12.44.090 Effect on liabilities.

Nothing in this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep trees or other landscape material upon said private property, or under his or her control, together with sidewalks and parkways in front of such private property in a safe condition.

Nothing in this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep trees or other landscape material upon said private property, or under his or her control, together with sidewalks and parkways in front of such private property in a safe condition. (O92-004)

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12.45.010 Purpose.

The purpose of this chapter is to promote the health, safety, welfare, and quality of life of the residents of the City of Napa through the protection of specified trees located on private property within the city. In establishing this protection of specified trees, it is the city's intent to promote a healthy urban forest that contributes to clean air, soil conservation, energy conservation, scenic beauty, enhanced property values and a quality of life ensuring that Napa will continue to be a desirable place to live and work. (O2003 4)

12.45.020 Definitions.

As used in this chapter, the words below shall have the following definitions, unless the context specifically indicates otherwise:

“Commission” means the Tree Advisory Commission for the city.

“Department” means the Community Resources Department of the city.

“Diameter” means the diameter of the tree trunk measured at four and one-half feet (or 54 inches) above the natural grade level or as determined by the most current edition of the “Guide for Plant Appraisal” authored by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture (ISA).

“Director” means the Director of Community Resources for the city or designee.

“Discretionary development approval” means an activity which requires the city to exercise judgment in deciding whether to approve or disapprove the particular activity including, but not limited to, a subdivision application, use permit, variance, or architectural review approval.

“Drip line area” means the area measured from the trunk of the tree outward to a point at the perimeter of the outermost branch structure of the tree.

“Hazardous tree, shrub or plant” means any tree, shrub or plant, or portion thereof, that poses a hazard to person or property. A tree, shrub, or plant may be deemed a hazard if it or any part of it: (1) appears dead, dangerous, or likely to fall; (2) obstructs a street or sidewalk; (3) harbors a serious disease or infestation threatening the health of other trees, shrubs or plants; (4) interferes with vehicular or pedestrian traffic; or (5) poses any other significant hazard as set forth in regulations promulgated by the Director pursuant to this chapter.

“Injure” means any act which damages a tree including, but not limited to, cutting, carving, transplanting, injurious attachment of any rope, wire, nails, advertising posters, or other contrivance to any tree; allowing any gaseous, liquid, or solid substance that is harmful to trees to come into contact with them; setting fire or permitting any fire to burn when such fire or the heat therefrom will injure any part of any tree; knocking over any tree; or damage inflicted upon the root system of a tree by the application of toxic substances, the operation of heavy equipment, the change of natural grade above or below the root system or around the trunk of a tree.

“Landscape material” means any tree, shrub, ground cover or other plant.

“Maintenance” means pruning, trimming, mulching, clipping, watering, staking, spraying, weeding, fertilizing, bracing, treating disease or injury, and any other acts which promote the life, growth, health, or beauty of the city’s trees or landscape material placed in the city right-of-way.

“Protected native tree” means a tree which meets both of the following requirements:

1. Is one of the following species of tree with a diameter as shown:

Species		
Common Name	Botanical name	Diameter
1. Valley Oak	Quercus lobata	12 inches or greater
2. Coast Live Oak	Quercus agrifolia	12 inches or greater
3. Black Oak	Quercus kelloggii	12 inches or greater
4. Blue Oak	Quercus douglasii	6 inches or greater
5. Coast Redwood	Sequoia sempervirens	36 inches or greater
6. California Bay	Umbellularia californica	12 inches or greater
7. Black Walnut	Juglans hindsii	12 inches or greater

2. Is located on private property over one acre in size zoned for residential or agricultural purposes, or is located on property zoned for commercial or industrial purposes.

“Pruning” means the removal of plant parts including, but not limited to, branches and shoots.

“Planting” means putting or setting into the ground or into a container to grow.

“Removal” means any intentional or negligent injury which causes a tree or landscape material to die.

“Replacement value” means the actual cost to the Department of replacing a tree or landscape material removed or destroyed or if irreplaceable, its value as determined pursuant to the appraised value as determined by the Guide for Plant Appraisal adopted by the Council of Tree and Landscape Appraisers, as amended from time to time.

“Right-of-way” means the area upon which a street or sidewalk passes as defined in Section 10.40.010 of the Napa Municipal Code.

“Significant tree” means a tree possessing special qualities and so designated pursuant to Section 12.45.010 of the Municipal Code.

“Street tree” means any tree within the public right-of-way.

“Subdivided” means a subdivision as defined by Section 16.08.090 of the municipal code.

“Tree” means any large perennial plant having a woody trunk(s), branches, and leaves.

“Tree Advisory Commission” or “Tree Commission” means the Commission established by the City Council pursuant to Section 2.80.020 of the Napa Municipal Code.

“Urban forest” means all trees on lands within the borders of the City of Napa. (O2003 4; O2004 13)

12.45.030 Significant trees.

A. A “significant tree” means any tree or grove of trees located within the city nominated by the Commission with the consent of the property owner upon whose land the tree is located and designated by the City Council. The following criteria shall be used in designating significant trees:

1. Historic significance associated with a person, place or event;

2. Unique or rare horticultural specimens;
 3. Uniqueness of size or age;
 4. Aesthetic value due to symmetry, form, color or other qualities;
 5. Visibility or prominence to public view;
 6. Significance for habitat protection;
 7. Native to Napa Valley.
- B. Council's resolution designating significant tree(s) shall be recorded by the City Clerk with the County of Napa Recorder. (O92-004; O2003 4)

12.45.040 Identification and inventory of significant trees.

The Director is authorized to maintain a list of known significant trees within the city. (O92-004; O2003 4)

12.45.050 Protection of significant trees during construction activity.

During any construction activity within 30 feet of the drip line of a significant tree, no person shall, without written permission from the Director, do the following:

- A. Change the amount of irrigation provided to any significant tree from that which was provided prior to the commencement of construction activity.
- B. Trench, grade or pave into the drip line area of a significant tree.
- C. Change, by more than two feet, grade elevations within an area from the drip line of a significant tree outward to 30 feet in distance.
- D. Park or operate any motor vehicle within the drip line area of any significant tree.
- E. Place or store any equipment or construction materials within the drip line area of any significant tree.
- F. Attach any signs, ropes, cables or any other items to any significant trees.
- G. Cut or trim any branch of a significant tree for temporary construction purposes.
- H. Place or allow to flow into or over the drip line area of any significant tree any oil, fuel, concrete mix or other deleterious substance.

Where written permission of the Director is sought under this section, the Director may grant such permission with such reasonable conditions as may be necessary to effectuate the intent and purpose of this chapter. (O92-004; O2003 4)

12.45.060 Permits for activities affecting significant trees.

- A. The removal of any significant tree shall be prohibited unless a permit therefor is first applied for by the property owner or person authorized by the property owner and granted by the Commission.
 1. A permit shall be granted by the Commission if it finds:
 - a. That the significant tree must be removed in order for the applicant to use the property for any use permitted as of right or by entitlement, i.e., final architectural review, parcel map or a valid use permit under the city zoning ordinance for the zoning district in which the property is located, and that such use could not be made of the property unless the tree is removed, or

- b. That the condition of the tree with respect to disease, danger of falling, or interference with utility services is such that the public health, safety and welfare require its removal, or
 - c. That the tree or tree roots are causing, or threatening to cause, serious or unmitigatable damage to any main structure on the owner's property, or
 - d. That the tree no longer meets the criteria for a significant tree set forth in this chapter;
2. The Commission shall not act on such an application until a public meeting is held thereon. Notice of the time and place of the meeting shall be posted in a conspicuous place near the significant tree and shall be mailed to the applicant and to all owners of real property located within a 300-foot radius of the real property upon which the significant tree is located. Notices shall be posted and mailed at least 10 days in advance of the meeting. As used in this section, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the county of Napa;
3. Any affected party may appeal a permit decision of the Commission to the City Council within 10 days of the Commission's action.
- B. None of the following activities shall be performed unless a permit therefor is first applied for by the property owner or person authorized by the property owner and granted by the Director:
- 1. Pruning of any branch, limb, or segment of a significant tree greater than four inches in diameter; the topping of any significant tree is prohibited as a normal practice. Topping is defined as the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy the existing symmetrical appearance or natural shape of the tree. Trees severely damaged by storms or other causes, or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted at the discretion of the Director;
 - 2. Injuring a significant tree. (O92-004; O2003 4)

12.45.070 Significant trees—Replacement program—Unlawful tree removal—Protection and maintenance of replacement trees.

- A. Replacement Program. All persons responsible for development projects shall be required to replace significant trees approved for removal. Each significant tree removed or damaged shall be replaced according to one or a combination of the following options as determined by the Commission:
- 1. For each six inches or fraction thereof of the protected tree's diameter, two trees of the same species as the protected tree (or any other species with approval) and a minimum 15-gallon container or larger size as determined by the Commission shall be planted on the project site;
 - 2. For each protected tree removed or damaged, three replacement trees of the same species as the protected tree removed and a minimum 15-gallon container or larger size shall be planted on the project site;
 - 3. If the project site is inadequate in size to accommodate the replacement trees, the trees shall be planted on public property with the recommendation of the Director and the approval of the Commission. At the discretion of the Commission, the Department may accept an in-lieu fee of \$300.00 per 15-gallon replacement tree with the moneys to be used for tree-related educational projects and/or planting programs;
 - 4. Each significant tree approved for removal shall be replaced within 60 days or at a reasonable time approved by the Commission.

B. Security and Maintenance of Replacement Trees. The Director may require security in an amount sufficient to secure the maintenance and protection of any replacement tree by any person removing trees as per subsection A of this section for a period of three years. Said security shall be returned at the end of the three-year period if, in the Director's judgment, the replacement trees are healthy and free of any defects. Any replacement tree that is not healthy or free of defects at the end of the three-year period shall be replaced, and security shall be held for another three-year period or until, in the Director's judgment, the tree has been well established. (O92-004; O2003 4)

12.45.080 Safeguarding protected native trees.

- A. No person shall, without first securing a permit from the Director, do any of the following which would have the potential for injuring a tree:
1. Prune any branch or limb of a protected native tree greater than four inches in diameter or remove more than 10% of any live foliage in any one-year period.
 2. Cut any root over two inches in diameter within the drip line area of a protected native tree.
 3. Change, by more than two feet, grade elevations within the drip line area of a protected native tree.
 4. Place or allow to flow into or over the drip line area of any protected native tree any oil, fuel, concrete mix or other substance that could injure the tree.
- B. The removal of any protected native tree shall be prohibited unless a permit therefor is first applied for by the property owner or person authorized by the property owner and granted under Section 12.45.090.
- C. A permit, under subsections A or B above or other applicable sections of this chapter, shall not be required to prune or remove a protected native tree under the following circumstances:
1. Trees damaged by windstorms, floods, earthquakes, fires or other natural disasters or causes and, to the extent possible with the information provided, determined to be dangerous by the City Manager or designee acting in their official capacity. The Director shall be promptly notified of the nature of the emergency and action taken.
 2. When removal is determined necessary by Fire Department personnel actively engaged in fighting a fire.
 3. Trees otherwise determined to be a hazard by the Director. Director shall require evidence of the hazardous condition.
- D. Where a permit from the Director is sought under subsection A above, the following shall apply:
1. Any person who desires a permit shall apply to the Director on the designated form.
 2. The Director shall not issue a permit under this section unless he or she finds that the activity proposed will not significantly harm or reduce the health of the tree, and any decision by the Director shall be based upon the following standards:
 - a. The size and species of tree and nature of the proposed activity;
 - b. The age and condition of the tree with respect to its general health;
 - c. The necessity of the requested activity;
 - d. Any other information pertinent to the decision including a tree protection plan submitted by the applicant from a qualified consulting arborist.

3. The Director may impose such reasonable conditions as he or she determines may be necessary to effectuate the intent and purpose of this chapter including, without limitations, adherence to the city's Standard Specifications for Tree Preservation and the most current American National Standard (ANSI) for Tree Care Operations.
4. Any applicant dissatisfied with the decision of the Director may appeal such decision to the Commission. Such appeal shall be in writing, stating the reasons therefor, and shall be filed with the Department not later than 10 days after the date of the Director's letter approving or denying the permit. Any appeal not timely filed shall be barred, and the Director's decision shall become final. The Commission shall consider all appeals at the Commission's next regularly scheduled meeting providing said appeal is received at least 14 days prior to the date of the meeting. Appeals received within 14 days of the Commission's meeting shall be scheduled on the following regularly scheduled meeting. The Commission shall base its decision upon the standards set forth in subsection (D)(2).
5. Any applicant dissatisfied with the decision of the Commission may appeal such decision to the City Council. Such appeal shall be in writing, stating the reasons therefor, and shall be filed with the City Clerk not later than 10 days after the date of the Commission's decision. Any appeal not timely filed shall be barred, and the Commission's decision shall become final. In appeals heard by the City Council, the decision of the City Council shall be final. The Council shall base its decision upon the standards set forth in subsection (D)(2).

(O2003 4; O2004 13)

12.45.090 Permits for removal of protected native trees.

- A. Where there is no pending discretionary development application, the removal of any protected native tree shall be prohibited unless a permit therefor is first obtained by the property owner or person authorized by the property owner from the Tree Commission in accordance with the following:
 1. An application for a permit shall be made on the form provided by the Director and shall include a plan describing each protected native tree on the property, its species, size, drip line area, and location. The location of all other trees on the site and in the adjacent public right-of-way and trees located on adjacent property with drip lines over the property shall be shown on the plan and identified by species. The applicant shall include such other information as the Director may determine is necessary to further the purposes of this chapter including, but not limited to, photographs and arborist reports.
 2. A permit may be granted by the Tree Advisory Commission if it finds any of the following:
 - a. That the protected native tree must be removed in order for the applicant to use the property for any use permitted by the city for property where the tree is located, and that such use could not be reasonably made of the property unless the tree is removed. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the Commission that there are no reasonable alternatives to the proposed design and use of the property; or
 - b. That the condition of the tree with respect to disease, danger of falling, or interference with utility services is such that the public health, safety and welfare requires its removal; or
 - c. That the tree or tree roots are causing or threatening to cause, serious or unmitigatable damage to any building.
 3. The Tree Advisory Commission shall not act on such an application until a public hearing is held thereon. Notice of the time and place of the hearing shall be posted in a conspicuous place

near the native tree and shall be mailed to the applicant and to all owners of real property located within a 300-foot radius of the real property upon which the significant tree is located. Notices shall be posted and mailed at least 10 days in advance of the hearing. As used in this section, "owner" means the person to whom the property was assessed in the latest equalized assessment roll of the county of Napa.

4. Any person dissatisfied with the decision of the Tree Advisory Commission may appeal such decision to the City Council. Such appeal shall be in writing, stating the reasons therefor, and shall be filed with the City Clerk not later than 10 days after the date of the Tree Advisory Commission's decision. Any appeal not timely filed shall be barred, and the Tree Advisory Commission's decision shall become final. The City Clerk shall set the appeal for hearing within 45 days after the appeal is filed. Notice of time and place of the hearing shall be given to the appellant, those who spoke at the hearing and those persons requesting notification of the hearing at least 10 days in advance thereof by mail, postage prepaid. The decision of the City Council shall be final. The City Council shall base its decision upon the standards set forth in subsection (A)(2).

B. Where there is a pending discretionary development application, the removal of any protected native tree shall be prohibited unless the following procedure is followed:

1. The property owner or authorized agent shall provide the following information to the Planning Director with the application for discretionary development approval pursuant to the filing requirements established by such Director.

a. A statement which discloses whether any protected native tree exists on the property which is the subject of the application, and describing each such tree, its species, size, drip line area, and location. This requirement shall be met by including the information on plans submitted in connection with the application.

b. The location of all other trees on the site and in the adjacent public right-of-way that are within 30 feet of the area proposed for development, and trees located on adjacent property with drip lines over the project site, shall be shown on the plans, identified by species.

c. Such other information as the Planning Director may determine is necessary to further the purposes of this chapter including, but not limited to, photographs and arborist reports.

2. Removal of a protected native tree in connection with a discretionary development approval may be authorized by the city if the decision-making body finds any of the following:

a. That the protected native tree must be removed in order to allow construction of improvements and that no reasonable use of the property can be made of the property unless the tree is removed. In this context, it shall be the burden of the person seeking the permit to demonstrate to the satisfaction of the decision making body that there are no reasonable alternatives to the proposed design and use of the property, or

b. That the condition of the tree with respect to disease, danger of falling or interference with utility services is such that the public health, safety, and welfare requires its removal, or

c. That the tree or tree roots are causing, or threatening to cause, serious or unmitigatable damage to any significant building or structure on the owner's property, or

d. That the project has minimized tree loss to the extent possible when balanced with General Plan land uses and policies and applicable design guidelines.

3. Every discretionary approval for property containing protected native trees shall include appropriate mitigation measures and/or conditions providing for the protection of such retained trees and for maintenance of the trees thereafter.

(O2003 4)

12.45.100 Protected native tree—Replacement program—Unlawful tree removal—Protection and maintenance of replacement trees.

Any person who has received permission to remove a protected native tree shall be required to replace the protected native tree approved for removal. Each protected native tree removed or damaged shall be replaced as follows:

- A. For each six inches or fraction thereof of the protected native tree, two trees of the same species as the protected tree (or any other species with approval) and a minimum 15-gallon container or larger size as determined by the Director shall be planted on the project site.
- B. If the project site is inadequate in size to accommodate the replacement trees, with the recommendation of the Director, the trees shall be planted on public property. The Director may accept an in-lieu fee, per 15-gallon replacement tree with the moneys to be used for tree-related educational projects and/or planting programs. In lieu fees shall be set by City Council resolution and adjusted on an annual basis as necessary and include the cost of planting.
- C. Each protected native tree approved for removal shall be replaced within 60 days or at a reasonable time approved by the Director or according to the conditions of any discretionary permit allowing removal of a protected native tree.
- D. The Director shall ensure that security is posted in an amount sufficient to secure the maintenance and protection of any replacement tree not planted on public property for a period of three years. Said security shall be returned at the end of the three-year period if, in the Director's judgment, the replacement trees are healthy and free of any defects. Any replacement tree that is not healthy or free of defects at the end of the three-year period shall be replaced, and security shall be held for another three-year period or until, in the Director's judgment, the tree has been well established. (O2003 4)

12.45.110 Violations.

- A. It is a violation of this chapter for any property owner or agent of the owner to fail to comply with the requirements of this chapter or any development approval, mitigation measure or condition concerning preservation, protection, maintenance of any tree, including, but not limited to, protected native trees.
- B. It is a violation of this chapter for any person to provide false or misleading information in response to the disclosure requirements. (O2003 4)

12.45.120 Hazardous trees—Abatement.

- A. Notice to Property Owner(s). Upon finding by the Director that a tree, shrub, or plant on private property is "hazardous" as defined in Section 12.44.010, the Director shall mail a written notice to the property owner(s) which describes the condition creating the hazard and sets forth the actions required to be taken to abate the hazard and the date by which compliance must be completed. Required action may include pruning or replacement and removal of the tree, shrub, or plant. In cases of extreme danger, as determined by the Director, the Director may require immediate compliance. Except in the case of extreme danger, no "hazardous" tree, shrub or plant standing on private property shall be completely cut down or removed unless 10 calendar days' notice of such intention is given by the Director to the property owner(s).
- B. Appeal from Notice. If the property owner(s) of the hazardous tree, shrub, or plant shall, within seven calendar days after the giving of such notice, file with the Director a written objection, the

Director shall give said property owner(s) a reasonable opportunity to be heard. Thereafter, pruning or removal of the tree shall be authorized only if the Director finds a hazardous condition exists.

C. Performance of Work by Department—Costs Billed to Property Owner. If the responsible property owner(s) does not take action required by the Director to abate the hazardous tree, shrub or plant within 10 days, the Department may perform the necessary work, and the cost of this service (including labor, equipment and materials, inspection services, and administrative overhead) shall be billed to the property owner(s). Payment shall be due within 60 days of the mailing date of the notice of payment due.

D. Contents of Notice of Payment Due. The notice of payment due sent to the responsible property owner(s) shall contain the following information:

1. A statement of the date written notice was sent as required by subsection A of this section;
2. A statement of work performed by the Department, the date or dates on which such work was performed, and the costs incurred by the Department in performing the work;
3. A notice advising the responsible property owner(s) that he or she is liable for the costs in the amount listed in the notice and that payment to the city to reimburse these costs is due within 60 days of the mailing date of the notice;
4. A notice advising that a penalty of 10% plus interest at the rate of one percent per month on the outstanding balance shall be added to the costs from the date that payment is due;
5. A notice advising the responsible property owner(s) that if payment of the costs is not received within 90 days from the due date, a lien may be imposed on the property pursuant to the provisions of this section.

E. Nonpayment of Costs—Additional Request. If full payment of the costs is not received within 60 days after notice of payment due was sent pursuant to subsection C of this section, an additional request for payment shall be sent to the responsible property owner(s). The notice shall state that the property owner(s) is liable for the payment of the costs indicated on the notice and if payment of such costs is not received within 30 days of the mailing date of this notice, a lien may be imposed on the property pursuant to the provisions of this section.

F. Lien Proceedings. If payment is not received within 30 days following mailing of the additional request, the Director shall charge the cost of the removal as a lien against the property. (O92-004; O2003 4)

12.45.130 No limitation of authority.

Nothing in this chapter limits or modifies the existing authority of the city under Title 16 (Subdivision Ordinance) and Title 17 (Zoning Ordinance) of the Napa Municipal Code to require trees and other plants not covered by this chapter to be identified, retained, protected, and or planted as conditions of the approval of development. In the event of conflict between provisions of this chapter and conditions of any permit or other approval granted by the city, the more protective requirements shall prevail. (O2003 4)

12.45.140 Civil penalties—Penalties established—Collection of civil penalties—Appeals.

A. In addition to the penalty set forth in Section 12.45.080, any person who violates this chapter is subject to the following civil penalty:

1. For each significant or protected native tree removed without prior authorization, the penalty shall be \$5,000.00 or the appraised value of the removed tree(s) as determined by the most current

edition of the "Guide for Plant Appraisal" authored by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture (ISA) whichever is greater.

2. For each willful or intentional action which violates Section 12.45.050, Section 12.45.060(B) or Section 12.45.080(A), the penalty is \$5,000.00.

B. Collection of Civil Penalties. The following shall apply to the collection of civil penalties as provided in this section:

1. Civil fines are payable at the city collections office. Fines must be paid within 10 business days. If an appeal is filed, the bail for the fine must be paid within said 10 days;

2. The Finance Department is authorized to collect all unpaid civil fines;

3. Any and all fines paid or collected pursuant to this chapter shall be deposited into a revolving fund to be used by the Department for replacing and planting trees and/or tree-related education projects.

C. Hearings. The imposition of a civil penalty may be appealed to the City Council, which may, in its discretion, reduce or excuse the penalty based on findings concerning:

1. The nature, circumstances, extent and gravity of the violation;

2. The extent to which the violation was willful and/or intentional; and

3. Whether and to what extent the violation can be promptly corrected and/or abated, and all City costs and expenses incurred in abating the violation reimbursed.

(O92-004; O2003 4)

12.45.150 Penalties for violation of chapter.

A. Violation of any of the provisions of this chapter shall be chargeable as a misdemeanor.

B. In addition to the penalty set forth in subsection A of this section, violation of any section of this chapter shall be the basis for injunctive relief. (O92-004; O2003 4)

12.45.160 Effect on liabilities.

Nothing in this chapter shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty to keep trees or other landscape material upon said private property, or under his or her control, together with sidewalks and parkways in front of such private property in a safe condition. (O92-004, Ord. O2002 20; O2003 4)

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