

**AN ORDINANCE TO AMEND CHAPTER 20, ENVIRONMENT, ARTICLE II TREE ORDINANCE, OF THE CODE OF THE CITY OF ROCHESTER TO REVISE VARIOUS SECTIONS REGARDING LANDMARK TREES, TREE REPLACEMENT REQUIREMENTS, AND OTHER TREE REGULATIONS.**

**THE CITY OF ROCHESTER ORDAINS:**

**ARTICLE II. - TREE ORDINANCE**

**DIVISION 1. - GENERALLY**

**Sec. 20-30. - Purpose.**

Continued urban growth, new development and redevelopment, and increased demand on natural resources have the effect of encroaching upon, despoiling, or eliminating many of the trees and other forms of vegetation, natural resources, and processes associated with wooded areas. If preserved and maintained in an undisturbed and natural condition, these resources constitute important physical, aesthetic, recreation, and economic assets to existing and future residents of the city. Specifically, the city finds that:

- (1) Tree and woodland growth protects public health through the absorption of air pollutants and contamination, through the reduction of excessive noise and mental and physical damage related to noise pollution, and through its cooling effect in the summer months;
- (2) Trees and woodlands provide for public safety through the prevention of erosion, siltation, flooding;
- (3) Trees and woodland growth are an essential component of the general welfare of the city by maintaining play areas for children and natural beauty, recreation and irreplaceable heritage for existing and future city residents; and
- (4) The protection of such natural resources is a matter of paramount public concern in the interest of health, safety and general welfare of the residents of the city, consistent with the Michigan Zoning Enabling Act 110, Public Acts of 2006, the State Constitution of 1963, and the Michigan Environmental Protection Act of 1970.

**Sec. 20-31. - Definitions.**

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

*Agriculture (silviculture)* means a land use, the primary purpose of which is to derive income from growing plants and trees including, but not limited to, fruit or timber production.

*City* shall mean City of Rochester.

*City manager* and *manager* shall mean the Rochester city manager or the Rochester city manager's designated representative.

*Clear-cutting* shall mean the removal of any or all trees from a parcel of land in the city that is not governed by an approved woodlands management plan and does not constitute tree harvesting. Nominal activity and nominal development, as defined herein, shall not constitute clear-cutting.

*Commercial nursery* or *tree farm* means a licensed plant or tree nursery that plants and grows trees for same to the general public.

*Diameter breast height (dbh)* means the diameter of a tree, in inches, measured at four and a half feet above existing grade.

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

*Greenbelt* shall mean a strip of land of definite width and location reserved for the planting of trees and/or shrubs adjoining to or near a public right-of-way and/or trees or shrubs designated to serve as an obscuring screen or buffer strip.

*Landmark tree* shall mean a tree of the genus and/or species and diameter listed in section 20-71, and any tree of 24 dbh or greater, which meets the health/condition criteria of section 20-71(2). A landmark tree shall also include a tree which is of historic value to the community based on its location or stature as may be designated pursuant to section 20-72.

*Nominal activity* means the removal of three or fewer trees, having seven-inch or greater dbh within a 12-month period from a lot that has previously been developed. However, nominal activity shall not include the removal of any landmark trees or historical trees. If the City determines that a tree is dead, its removal is not counted in the nominal tree limitation.

*Nominal development* shall mean the removal of any tree within ten feet of the proposed foundation wall of a proposed new building containing a principal permitted use or a proposed addition to a building containing a principal permitted use. However, nominal development shall not include the removal of any landmark trees or historical trees.

*Protected tree* means all trees seven inches dbh or greater, provided they are not classified as a landmark tree or historical tree in chapter 20, division 6.

*Public utility* means any person, organization, firm or corporation, public or private, duly authorized to supply electric, gas, telephone, cable, satellite, internet, telegraph, sewer or water service to, or for the general benefit of the public.

*Regulated development* means all commercial, office, industrial or multiple-family development or redevelopment, and all new single-family residential development that includes two or more lots, homesites, units, residences, or the like.

*Right-of-way* means any public street, highway, railway, alley, greenbelt or avenue of the city.

*Trees and shrubs* mean all woody vegetation.

*Tree harvesting* shall mean the removal of trees from a parcel of land in accordance with an approved woodlands management plan, for purposes of woodlot improvement, lumber production, or similar purposes.

*Tree removal permit* means the permit issued by the City required before the removal of any regulated tree. The fee for the tree removal permit shall be set forth in the City's Master Fee Schedule. No tree removal permit fee is required if the City determines that only dead or dying trees are proposed to be removed.

## **DIVISION 2. - VEGETATION ON PUBLIC GROUNDS**

### **Sec. 20-35. - Applicability of division provisions.**

The provisions of this division, unless otherwise specifically stated, shall apply only to rights-of-way, parks and other land publicly owned or controlled by the city.

### **Sec. 20-36. - Enforcement.**

The city manager shall be charged with the duty of enforcing the provisions of this article and may delegate all duties that may be required or imposed to appropriate city staff.

### **Sec. 20-37. - Rules.**

The city manager shall have control over all trees, shrubs and plants in the streets, alleys and parks of the city and is empowered to plant, prune, spray, cultivate and preserve all trees and shrubs within the confines of the streets, alleys, parks and public areas of the city. No person shall prune, spray, plant or remove any shrubs or trees upon the rights-of-way or parks without first obtaining a written permit from the city manager. No person shall cut or break down or destroy any trees or shrubs in the rights-of-way or parks at any time without first obtaining the written permission of the city manager. No person shall plant any shade or ornamental trees in the rights-of-way or parks without approval as to location, variety of trees, size, etc., by the city manager. Trees shall not be planted in the rights-of-way where police, fire, street lighting, traffic signal or public utility overhead wires and equipment are located where such planting or anticipated growth dimensions may interfere with said items. No person shall have the right to plant any variety of poplar trees, willows, box elders, silver maples, tree of heaven, horse chestnut, buckeye, or other quick growing tree in such location that their roots are likely to injure sewers or heave walk or street surfaces.

### **Sec. 20-38. - Use as anchor.**

It shall be unlawful for any person to use any tree as an anchor, and no material shall be fastened to or hung on any trees in any rights-of-way or park except by written permission of the city manager.

### **Sec. 20-39. - Trimming.**

Every owner of any tree, shrub or plant, overhanging the streets or rights-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 the surface of the street, alley, or rights-of-way. Such owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to trim any tree or shrub on private property or within the 25-foot corner clearance of a street intersection when it interferes with visibility of any traffic control device or sign, or interferes with any public utility wires or equipment necessary to serve police or fire communication systems or street lighting or traffic control systems, such trimming to be confined to the area immediately above the rights-of-way.

### **Sec. 20-40. - Covering surface near trees.**

No person shall place on public property any stone, brick, sand, concrete, mulch, compost or other material at the base of any tree which will in any way or in such quantities that will impede the

full and free passage of water, air or fertilizer to the roots of any trees, subject to the provisions of this article.

**Sec. 20-41. - Protection of trees.**

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree; provided, however, that this shall not prohibit the use of city-approved chemical control of trees and brush growth. No electric wires or installation, or any other lines or wires, shall be attached to any tree in any manner that shall cause damage thereto. All persons having under their care, custody or control facilities which may interfere with the trimming or removal of any tree subject to this article shall, after notice thereof by the city, promptly abate such interference in such a manner as shall permit the trimming or removal of any tree by the city.

**Sec. 20-42. - Planting and removal.**

The planting and/or removal of trees and shrubs in the public rights-of-way, parkways, parks, and other public areas of the city may be done either upon resolution of the city council or by order of the city manager.

**Sec. 20-43. - Assessments.**

Whenever deemed necessary by the city manager to lay out and plant trees and shrubs upon any public rights-of-way within the city or to remove undesirable species of trees, other than those so specified in this article, it shall be the duty of such city manager to report such fact to the city council. Such planting or removal shall be deemed to be a public improvement. The cost thereof may be paid, in whole or in part, by levying and collecting special assessments upon property especially benefited thereby, in accordance with the provisions of chapter 46, special assessments.

**Sec. 20-44. - Planting location.**

In all future planting of shade trees in the rights-of-way, such trees shall be spaced not less than 35 feet apart, except that trees may be planted less than 35 feet apart if a review by the city manager reveals proper species selection for a confined site. Trees may be planted less than 35 feet from an existing tree in the rights-of-way, provided that the existing tree has been approved for removal within a period of two years from the date of planting of the new tree. No tree shall be planted in planting strips between the curb and sidewalk that are less than six feet in width unless it is a replacement planting deemed appropriate for placement by the city; trees on private property adjacent to the sidewalk shall be planted not less than six feet therefrom. No trees shall be planted nearer to the intersection of any two or more streets closer than 25 feet from the point of intersection of two right-of-way lines.

**Sec. 20-45. - Utility permits.**

The city manager shall, upon request of any interested public utility, issue an annual permit, and shall annually thereafter renew such permit, granting permission to the public utility to chemically control and trim and keep trimmed all trees and shrubs intruding into the air spaces over, or growing within the confines of, the streets, alleys, parks, rights-of-way and public places of the city in such a manner as shall keep the overhead lines or equipment of such public utilities safe and accessible, and clear of all tree growth which endangers or may endanger said overhead lines or equipment and the

public health and safety. Such chemical control and trimming shall be done in accordance with approved practices and under the general direction of the director of public works. The permit, as provided for in this section, shall require reasonable prior notice to the city before any work is commenced thereunder; provided, however, that in the event of any emergency requiring immediate maintenance work on the overhead lines of such public utility, prior notice of commencing work under such permit shall not be required. The term "emergency," as used in this section, shall be defined to mean the occurrence or happening of an event which could not be expected or prevented by the exercise of reasonable care and foresight and which endangers or may endanger the overhead lines of the public utilities and the public health and safety.

**Sec. 20-46. - Removal of obstructing trees.**

The city manager is hereby authorized to direct the department of public works to remove any trees or shrubs growing on any rights-of-way, park or public place in the city when such trees or shrubs are interfering with fire hydrants, sewers and water mains, visibility at street intersections, traffic control devices or construction affecting the public health and safety within the rights-of-way.

**DIVISION 3. - PEDESTRIAN CORRIDOR STREET TREES**

**Sec. 20-50. - Street trees generally.**

Trees can greatly enhance the community's natural environment by providing shade, blocking wind and cleaning the air. Street trees planted within the public right-of-way can help to create a buffer between people and cars. The requirements of this section are intended to promote pedestrian activity along the major pedestrian corridors within the city. The city's designated pedestrian corridors include Main Street, Walnut Street, Fourth Street, East University and West University.

- (1) New development or redevelopment of sites along the city's designated pedestrian corridors shall include street trees planted within the public right-of-way. Approved street trees shall be planted at 50-foot intervals along all major pedestrian corridors.
- (2) Street trees shall be planted with a minimum caliper of two and a half inches dbh; the species of the required trees shall be consistent with the approved species for the corridor to create a themed appearance. Multiple species of trees may be required in order to protect against species-specific disease.
- (3) The branch height of mature trees on the traffic side shall be maintained at no less than 14 feet above the street. Branch height on the pedestrian side of the street shall be no less than eight feet above the sidewalk. Mature tree height and canopy fullness shall not obscure important building features or business identification.
- (4) Tree wells in sidewalks must be a minimum of five feet × five feet and 3½ feet deep.
- (5) Proper irrigation systems must be installed to establish and maintain healthy growth.
- (6) Street trees shall not be placed closer than 25 feet from intersections and shall remain out of the clear vision triangle.

## **DIVISION 4. - NUISANCE TREES ON PRIVATE PROPERTY**

### **Sec. 20-53. - Infected trees declared nuisance.**

Trees or parts thereof in a dead or dying condition that are hazardous so as to be injurious to the public, or that may also serve as breeding places for infectious diseases or harmful insects, are hereby declared to be public nuisances, and it shall be unlawful for the person owning property whereon the same is situated to possess or keep the same.

### **Sec. 20-54. - Manager to enforce.**

The city manager is charged with enforcement of this division. If it comes to the city manager's attention that there are one or more trees on a property that may constitute a nuisance under section 20-53, the city manager shall notify the property owner of such preliminary determination and provide the property owner an opportunity to schedule a meeting at the property with the city manager to discuss the nuisance determination and inspect the tree(s) together. Such notice shall be by way of certified mail or by hand delivery. Such notice is not required if an emergency situation exists as reasonably determined by the city manager. If the property owner declines the meeting or fails to respond to such notice within 30 days, the city manager and any persons deemed necessary by the city manager may enter upon private property at all reasonable hours for purposes of inspecting trees thereon, and may remove such specimens as are required for purposes of analysis to determine whether or not the same are infected. If entry is refused or no response from the property owner is received, and if it is determined by the city manager that it is feasible to delay entry, the city shall obtain an administrative search warrant from the court authorizing such entry. It shall be unlawful for any person to prevent the city manager entering on private property for purposes of carrying out his duties hereunder, or to interfere with such city manager in the lawful performance of his duties under the provisions of this division.

### **Sec. 20-55. - Corrective action.**

If any trees on private property are found to be infected, infested or otherwise hazardous to the public, the city manager shall give to the owner of the premises where such trees are situated written notice of the existence of the condition, and require corrective action including, but not limited to, complete removal to be under the direction and supervision of the city manager. Such notice shall be by way of certified mail or hand delivery. Such notice shall also notify the owner of such premises that unless corrective measures are taken in compliance with the terms thereof within ten days of the notice, the city may proceed with the removal of such tree(s), and assess the cost thereof against the property in accordance with chapter 46, special assessments. The notice herein required shall be given as prescribed in section 46-8. However, such notice and opportunity to take corrective measures are not required if an emergency situation exists as reasonably determined by the city manager.

### **Sec. 20-56. - Appeals.**

Should a property owner dispute a determination that the tree(s) identified by the city manager constitute a nuisance under this division, the property owner may provide a written notice of the dispute to the city manager who shall place the item on the next available city council agenda. At the city council meeting, the property owner will be afforded an opportunity to be heard and provide whatever materials the property owner wishes. The city council shall then make a determination whether a nuisance under this division exists and, if so, may determine the terms, condition and timelines of such removal as it deems appropriate. Notwithstanding the foregoing, if an emergency

condition exists such that removal of the tree must be done for the protection, health, safety and welfare of the public or other property before such appeal could be completed, the city manager is not required to wait for such an appeal to occur before removing the tree(s).

**Sec. 20-57. - Court action.**

If it is determined by the city manager that a tree constitutes a nuisance, but it is not deemed to be an emergency matter such that it is feasible to proceed against the property owner for an ordinance violation of this division for having a nuisance tree and failing to take corrective action, the city shall obtain a court order permitting the city to remove said tree(s).

**DIVISION 5. - REMOVAL OF TREES IN A NEW SUBDIVISION**

**Sec. 20-60. - Applicability.**

This division shall apply to parcels in any new subdivision, a regulated development, a nominal development, and/or projects requiring site plan approval, special exception approval, subdivision plat approval, or condominium approval. This division shall also apply to all property in the city regarding clear-cutting, indiscriminate removal and tree harvesting.

**Sec. 20-61. - Permit required for tree removal.**

- (a) No person shall remove, cause to be removed, transplant, or destroy any tree having seven-inch or greater dbh or any conifer greater than 20 feet in height without first obtaining approval and tree removal permit from the city. Approval shall require the submission of a tree survey for the property under consideration.
- (b) Provisions for protecting trees on-site and on adjoining properties during construction, and preservation of trees in connection with grading and drainage shall be provided. All trees to be retained shall be protected from heavy equipment, material storage, and other construction activities by temporary fencing at the drip lines and posting of signs prohibiting encroachment with that area during construction.

**Sec. 20-62. - Tree survey content.**

For any project requiring site plan approval, special exception approval, subdivision plat approval or condominium approval, a tree survey shall be prepared to scale and shall identify the location and type of all trees seven inches or greater dbh and all conifers greater than 20 feet in height. All trees must be tagged in the field with numbers using noncorrosive metal tags.

**Sec. 20-63. - Minimum preservation requirement.**

Except for the area within the right-of-way of a public street, an easement for public utilities, or the area defined as nominal activity or nominal development, a minimum of 80 percent of the combined dbh of trees having seven inches or greater dbh and 80 percent of all conifers greater than 20 feet in height shall be retained and undamaged.

**Sec. 20-64. - Replacement option.**

If a developer must remove certain trees in excess of the 80 percent minimum preservation requirement, replacement of trees shall occur on the site of the principal building, within a public right-of-way, in a boulevard island, or on property permanently reserved as open space (for example: a subdivision outlot-park, dedicated public park or open space, and the like). Every tree seven inches or greater dbh and all conifers greater than 20 feet in height that will be removed shall each be replaced consistent with section 20-79.

**Sec. 20-65. - Agriculture exemption.**

Agriculture, silviculture, commercial nurseries, and tree farms, as defined herein, are exempt from the requirements of this division.

**Sec. 20-66. - Woodlands management plan.**

Tree removal may occur on property where a woodlands management plan, prepared by a Michigan Registered Forester or Michigan Registered Landscape Architect, is approved by the city council following consultation with and a recommendation from the city forester and planning commission. The woodlands management plan shall demonstrate that removal activities are designed to reduce the density of trees so as to promote and maintain the health and viability of the remaining trees. The woodlands management plan shall include the means by which cut trees shall be removed from the property without damaging remaining trees. Not more than 20 percent of existing trees seven inches or greater dbh shall be removed in a 12-month period under an approved woodlands management plan.

**Sec. 20-67. - Right-of-way, public utility exemption.**

The area encompassed by the right-of-way of a public street or an easement for public utilities is exempt from requirements for tree preservation and/or replacement.

**Sec. 20-68. - Nominal activity exemption.**

Nominal activity, as defined in section 20-31, is exempt from requirements for tree preservation and/or replacement. Notwithstanding this exemption, a tree removal permit is still required for removal of any protected tree. Further, nominal activity is not exempted for condominium, apartment or subdivision common areas or open spaces, except as may be permitted in section 20-69.

**Sec. 20-69. - Developments with common areas/open spaces.**

- (a) For existing condominium developments, apartment complexes, or any other developments that have approved treescape plans or site plans with treescaping [requirements], conditions or commitments, no trees may be removed from the complex or common areas without City approval to ensure compliance with the approved plan(s). The complex owner or association board with authority over the common areas may seek an amendment of said plan(s) from the planning commission, which shall include an updated tree survey showing current conditions.
- (b) For existing condominium developments, apartment complexes, or any other developments that do not have an approved treescape plan or site plan with treescaping requirements, conditions or commitments, the City shall utilize Google Earth or a similar mapping service to determine the treescaping as it existed on November 9, 2009, the date the City's Tree Ordinance

was recodified/readopted. The treescaping as of that date will serve as the development’s baseline treescaping plan for purposes of this Ordinance. No trees may be removed from the complex or common areas without city approval and in accordance with this Ordinance. Should removal of trees be requested, and except as otherwise provided in this Ordinance, the complex owner or association board with authority over the common areas shall obtain a tree survey and submit it to the planning commission, along with the immediate and long-term tree removal and replacement plan. The requested tree removal and replacement plan (if replacement is included) shall be prepared by a professional forester, certified arborist or other qualified professional acceptable to the city. The planning commission may approve it as presented, approve a modified plan, approve the plan with conditions, or deny the plan. No trees shall be removed contrary to the approved plan without obtaining an amended plan from the planning commission.

- (c) New developments with common areas and/or open spaces shall submit a tree survey, site plan and request for tree removal to the city as part of any site plan approval, special exception approval, subdivision plat approval, or condominium approval, the approval of which shall be part of the overall approval for the project and shall not be deviated from without amendment of the site plan.
- (d) Notwithstanding the foregoing, for an existing apartment complex consisting of a single sidwell, the complex owner may remove up to three trees in a single calendar year without seeking planning commission approval so long as a permit is obtained and replacement trees are planted on the property, or elsewhere if deemed appropriate by the city.
- (e) Nothing in this section shall permit the removal of a landmark tree or historic tree. Removal of such trees shall be controlled by division 6 below, sections 20-71 through 20-74.
- (f) Notwithstanding the prohibitions against removal of trees in this section, city administration may allow the removal/replacement of non-landmark, non-historic trees that administration agrees need to be removed due to the trees being dead or diseased, without the matter having to come before planning commission for approval. A tree removal permit would be required.

**DIVISION 6. - LANDMARK TREES**

**Sec. 20-71. - Landmark tree designation.**

All trees within the city of 24 inches dbh or greater and all trees listed in subsection (1) by genus and/or species and minimum size dbh shall be considered landmark trees if they also meet the health/condition criteria of subsection (2):

- (1) *Landmark trees.*

Common Name	Botanical Name	dbh
Arborvitae	Thuja	18"
Beech	Fagus	18"

Birch	Betula	18"*
Black Gum	Nyssa sylvatica	12"
Blue Beech	Carpinus caroliniana	8"
Cedar, Red	Juniperus virginiana	12"
Chestnut	Castanea	10"
Crabapple	Malus	12"
Dogwood	Cornus	8"
Douglas Fir	Pseudotsuga menziesii	18"
Fir	Abies	18"
Ginkgo	Ginkgo	18"
Hawthorn	Crataegus	12"
Hemlock	Tsuga	18"
Hickory	Carya	18"
Hornbeam	Ostrya	8"
Horsechestnut	Aesculus hippocastanum	18"
Buckeye	Aesculus glabra	18"
Kentucky Coffeetree	Gymnocladus dioicus	18"
Larch/Tamarack	Larix	12"
London Plane/Sycamore	Platanus	18"
Magnolia	Magnolia	8"

Maple, Red	Acer rubrum	18"
Maple, Norway	Acer platanoides	18"
Pine	Pinus	18"
Redbud	Cercis canadensis	8"
Sassafras	Sassafras albidum	15"
Serviceberry	Amelanchier	8"
Spruce	Picea	18"
Sweetgum	Liquidambar styraciflua	16"
Tulip Tree	Liriodendron tulipifera	18"
Walnut	Juglans	20"
Wild Cherry	Prunus	18"
Witch Hazel	Hamamelis virginiana	8"

\* If a birch tree has multiple trunks, then its total dbh shall be computed by adding the dbh in inches of each of the trunks.

- (2) In order to be considered a landmark tree, in addition to the above requirements, said tree shall also have a score of 16 or higher as determined by the city in accordance with the following health/condition criteria:

Factor	Ranking		
	5 or 4	3 or 2	1
Trunk	Sound and solid	Sections of bark missing	Extensive and hollow
Growth/rate	More than 6" twig	2"—6" twig elongation	Less than 2"

Structure	Sound	One major or several minor limbs dead	Two or more major limbs dead
Insects/diseases	No pests present	One pest present	Two or more pests present
Crown/development	Full and balanced	Full but unbalanced	Unbalanced and lacking a full crown
Life expectancy	Over 30 years	15—20 years	Less than five years

- (3) A tree of a genus and/or species classified by a state or federal agency as being a public nuisance, or a tree deemed to be a nuisance by the city, shall not be considered a landmark tree. The City deems the following trees to be a nuisance for purpose of this Division:

Common Name	Botanical Name
Boxelder	<i>Acer negundo</i>
Chinese Elm	<i>Ulmus parvifolia</i>
Cottonwood	<i>Populus deltoides</i>
Crabapple species	<i>Malus</i> spp.
Ginko (female)	<i>Ginko biloba</i>
Hawthorn species	<i>Crataegus</i> spp.
Mulberry species	<i>Morus</i> spp.
Pear species	<i>Pyrus</i> spp.
Russian Olive	<i>Elaeagnus angustifolia</i>
Siberian Elm	<i>Ulmus pumila</i>
Silver Maple	<i>Acer saccharinum</i>

Tree of Heaven	Ailanthus altissima
Willow species	Salix spp.

**Sec. 20-72. - Historic tree designation.**

- (a) *Designation process.* Any resident or property owner in the city may nominate a tree for historic tree designation by the planning commission, based upon its age, type, size, historical or cultural association. The nomination shall be made on a form provided by the planning commission. If the nomination is made by a person who is not owner of the property on which the tree is located, the owner shall be notified by personal service or by certified mail, at least 15 days in advance of the date, time, and place that the planning commission will consider the designation. The notice shall advise the owner that designation will make it unlawful to damage, destroy or remove the tree. If the owner does not object to such designation, the planning commission may designate the tree as a historic tree if it meets one or more of the criteria set forth in subsection (b) below. If the owner objects, the planning commission shall prepare a report and recommendation to the city council as to its position on the historical designation of the identified tree. The city council shall then hold a public hearing and make a determination as to whether the tree should be designated as a historic tree. Once the property owner receives notice that a tree on the owner's property has been nominated for historic tree designation, removal of said tree is prohibited unless and until there is a decision by the city council that the nominated tree will not receive historic tree designation.
- (b) *Historical tree designation criteria.* A tree may be designated as a historical tree if one or more of the following criteria are established:
- (1) A tree that may be associated with a notable local or regional historical event, person, structure, or landscape.
  - (2) A tree that has been planted or dedicated as a public memorial.

**Sec. 20-73. - Removal prohibited.**

Removal of any landmark tree or historic tree is prohibited without City approval. Any person wishing to remove a landmark tree or historical tree must submit a written request to the City Manager with the reason for seeking its removal. City administration and/or its consultant will review the request and inspect the tree to confirm whether the tree is a landmark tree under Sec. 20-71 or a historic tree under Sec. 20-72. If administration makes the determination that the tree is either a landmark tree or historic tree, the applicant's request to remove the tree shall be processed as follows:

- (a) Applicant's request shall be sent to the City's tree subcommittee, established in Section 20-85, along with administration's report and recommendations.
- (b) The tree subcommittee shall meet to hear and consider applicant's request and administration's report and recommendation. Such a meeting shall be open to the public and all neighbors within 300 feet of the property will be notified of the meeting at least 15 days before the meeting. At the hearing, it shall be the burden of the applicant to demonstrate that there is good reason to remove said landmark tree such that the public interest in retaining a

landmark tree or historic tree is outweighed by the applicant's need to remove it. Examples of possible reasons supporting removal may include the tree roots damaging the foundation or other portions of the home, roots damaging water or sewer lines (and repair of the lines is not possible without tree removal), and tree roots are unreasonably damaging the owners driveway, and eliminating the roots in such cases are not possible without severely damaging or killing the tree. It is up to the applicant to demonstrate, and not merely allege that any such conditions exist. The utilization of a civil engineer or other expert is not required, but encouraged. While it is the burden of the applicant, the City may use its own inspector and/or engineer to provide verification and opinion. Request to remove such trees to simply allow increased utilization of the lot will not likely meet the necessary standard. As part of any approval city council may set any terms and conditions for the removal of a landmark tree or historic tree, including health, safety, welfare and replacement. The foregoing approval process shall not be required if the applicant sufficiently establishes to the city manager that the landmark tree or historical tree is dying or diseased such that an emergency safety situation exists.

- (c) The tree subcommittee may deny the request, approve the request, approve the request with conditions (in addition to the required replacement conditions in Sec. 20-79), or request additional information and defer consideration to a future meeting.
- (d) If the subcommittee denies the request for removal, the applicant may appeal the decision to City Council by submitting a written request to the City Manager within 10 days of the subcommittee's decision. Should an appeal be requested, a public hearing will be scheduled at the next available City Council meeting. All neighbors located within 300 feet of the property on which the landmark tree or historic tree is located shall be provided written notice of the public hearing at least 15 days before the hearing. Applicant shall be responsible for all costs of the City's notification of the public hearing, which shall be paid in advance.
- (e) At a City Council public hearing, the burden set forth in subsection (b) shall apply. After the hearing, City Council may deny or approve the request, or request additional information and defer consideration to a future meeting.
- (f) If the tree subcommittee approves the applicant's request, the applicant may not remove the tree for a period of 10 days of the subcommittee's decision to allow administration or any other resident to appeal the decision to City Council. An appeal of the tree subcommittee's decision shall be made and processed as set forth in subparagraph (d) and (e), except that the person appealing the subcommittee decision shall pay for the costs of the appeal instead of the applicant. Until City Council has acted on the appeal, applicant shall not remove the tree.

**Sec. 20-74. - Clear-cutting prohibited/protective measures required.**

- (a) *Clear-cutting*, as defined in this article shall be prohibited. All removal of trees, including tree harvesting, that does not constitute nominal activity or nominal development, or that is not incidental to a regulated development shall require approval of a woodlands management plan as provided in this article.
- (b) *Protective measures.* For all landmark or historic trees that City Council has not authorized to be removed under this section, all care must be used to preserve said tree. Such protective measures include, but are not limited to, prohibiting construction activities within the drip

line, maintaining root structure, and otherwise taking steps to prevent stress or other conditions on the tree that may lead to the tree's degradation or otherwise no longer meeting the criteria for being a landmark or historic tree. Further, protective barriers are required to be implemented as follows:

- (a) Land clearing. Prior to the land clearing stage of development, the owner, developer or agent shall do the following:
  - (1) All trees for which application is being made for removal shall be so identified on site by fluorescent orange spray paint (chalk base) or by red flagging tape prior to field inspection by the department.
  - (2) Keep clear all debris or fill, equipment and material from within the required protective barrier.
  - (3) Before development, land-clearing, filling, or any land alteration for which a tree removal permit is required, the applicant shall erect and maintain protective barriers to protect remaining trees. Protective barriers shall remain in place until the City authorizes their removal or issues a final certificate of occupancy, whichever occurs first. Wood, metal, or construction fencing shall be utilized during construction to protect existing trees.
- (b) Drip line. During construction, the owner, developer or agent shall not cause or permit any activity within the drip line of any protected tree or group of trees, including, but not limited to, the storage of equipment, dumpsters, boulders, dirt and excavated material, building or waste material or any other material harmful to the life of a tree.
- (c) Tree attachment prohibited. No damaging attachment, wires (other than cable wires for trees), signs or permits may be fastened to any protected tree.
- (d) City monitoring. The City will conduct periodic inspections of the site during land clearing and construction in order to ensure compliance with this Article.
- (e) Bonding, financial security requirements. Applicant may be subject to bonding or financial security requirements if the City deems it appropriate.
- (f) Damage to plantings. Damaged trees or illegally removed trees shall be repaired or replaced as directed by the City Forrester or City Manager. Repair work shall be executed as soon as possible by a competent firm or tree surgeons approved by the City and in a manner approved by the City at the expense of the applicant or permit holder.
  - (1) The City shall evaluate such damage and shall apply proportional amounts and penalty fees up to 100 percent of calculated value, regardless of the disposition of the particular specimen. The applicant is also subject to the penalties and fines for violations of the ordinances.
  - (2) Where partial damage occurs, applicant or property owner may choose to make repairs and retain the specimen. The City Forrester/Manager will evaluate such damage, and will set proportional amounts, up to 100 percent of the calculated replacement value regardless of the disposition of the particular specimen.

## **DIVISION 7. - PRIVATE PROPERTY AUTHORIZED TREE REMOVAL**

### **Sec. 20-75. - Applicability.**

This division shall apply to all trees located on private property, except that which is specifically regulated in divisions 2 through 6.

### **Sec. 20-76. - Approval required for removal.**

- (a) No person shall remove, cause to be removed, transplant, or destroy any protected tree without first obtaining approval and a tree removal permit from the city, even if the tree is allowed to be removed by any other provision in this chapter.

### **Sec. 20-77. - Replacement.**

Removal of any protected tree in excess of that allowed under nominal activity requires the applicant to comply with the tree replacement provisions of division 8 for all trees removed in excess of nominal activity. A tree removal permit is required for all protected tree removals.

## **DIVISION 8. - TREE REPLACEMENT**

### **Sec. 20-79. - Permitted tree removal.**

As a condition of granting a tree removal permit for trees that the applicant has received permission to remove, the applicant shall be required to replace trees being removed subject to the following conditions:

- (1) *Required replacement calculations.* The replacement calculations shall indicate the total caliper inch at dbh of trees being removed. The total number of replacement trees and caliper inches shall be provided and graphically illustrated on a plan.
  - a. Replacement trees shall be at least two and one-half inches caliper and eight feet in height for evergreens.
    1. Trees will be measured at six inches above finished grade for replacement trees four inches caliper or less and at 12 inches above finished grade for all trees greater than four inches caliper.
  - b. Larger evergreen trees may be used to fulfill replacement requirements at the equivalent rate of one inch for each two and eight-tenths feet in height.
  - c. Consideration may be given to allow smaller caliper trees if they are part of a replacement plan that specifies a mixture of sizes and intended to simulate as natural woodland habitat.
- (2) *Replacement rate for protected trees.* Except for common areas owned by condominium associations, homeowners associations and apartment complexes (whose replacement requirements are set forth in subsection (14) below), protected trees, other than landmark and historic trees, must be replaced at a rate of 100 percent of the total dbh removed. Each protected tree(s) must be replaced with a tree that is a minimum of two and one-half-inch caliper or eight feet in height for evergreens.

- (3) *Replacement rate for landmark and historic trees.* Landmark and historic trees receiving city approval for removal must be replaced at a rate of 125 percent of the total dbh removed. Each landmark tree(s) must be replaced with trees that are each a minimum of two and one-half-inch caliper or eight feet in height for evergreens.
- (4) Intentionally omitted.
- (5) The location of transplanted trees and replacement trees must be provided on the landscape plan. Transplanted and replacement trees shall be clearly distinguished from required landscape elements.
- (6) Trees required to be planted in accordance with this section shall be in place and properly supported prior to the issuance of a final certificate of occupancy. The center of said trees shall not be located closer than four feet to any property line or ten feet to any utility line.
- (7) All purchased replacement trees shall satisfy American Association of Nurseryman standards, including:
  - a. Nursery grown.
  - b. State department of agriculture inspected.
    1. Tree spade transplanted while in the dormant state, or if not in the dormant state, having been balled and burlapped with a solid well-laced root ball in the dormant state.
    2. No. 1 grade, with straight unscarred trunk and a well-developed uniform crown. Park grade trees are not acceptable.
    3. Staked, watered and mulched in accordance with standard planting practices.
- (8) Replacement trees shall be guaranteed for a minimum of one year, including labor. After one year, dead or diseased trees must be replaced prior to final city approval.
- (9) Where the city finds it is not reasonable or desirable to relocate or replace trees on site, relocation or replacement may be made at another approved location within the city.
- (10) Where the city finds it is not reasonable, practical and desirable to relocate or replace trees on site or at another approved location within the city, the city may direct the applicant to pay into the city's tree fund an amount of money equal to the value of the replacement trees, including installation, that would otherwise be required.
  - a. The cost estimate shall be calculated at two times the wholesale cost from an established local nursery catalog with a current publish date, submitted by the applicant and approved by the city.
  - b. Use of the city's tree fund for various city-wise beautification and/or tree preservation efforts including, but not limited to, gypsy moth management program, diplopedia spraying and similar preservation efforts will be at the sole discretion of the city.
- (11) While not required to do so, the applicant is encouraged to plant the replacement trees from the city's list of preferred tree species, which list shall be available from the city clerk.
- (12) Should the applicant not be able to pay for replacement trees or the payment into the tree fund as required in this section, the applicant may request a partial or full waiver of said payment from City Council. After considering the applicant's request and supporting

documentation/information, City Council may grant a full or partial waiver, establish a special assessment district or take any other accommodation deemed appropriate, if any. Waivers will only be considered for trees on residential properties and not as part of a new development, or redevelopment on the property (beyond repair of current structure(s) as they currently exist), or a commercial venture of any type.

- (13) Arborvitae and other bush-like vegetation may only be used to satisfy up to 25 percent of all required replacements and must meet all other replacement criteria, including the eight (8) foot minimum height requirement of Sec. 20-79(1).
- (14) *Replacement rate/requirements for common areas.* For condominium associations, homeowners associations and apartment complexes that own common areas, the following requirements apply:
  - a. For boulevard areas, landscaped islands and similar decorative areas, the 100% replacement requirement of Subsection (2) applies, with at least 50% of the total dbh replacement to be made in said area to maintain fully treed and landscaped appearance.
  - b. For groups of trees that provide a buffer or screening in a common area, the association/apartment may submit a removal and replacement plan for said buffer/screen area to City Administration for approval. City Administration may approve the plan, even if the plan doesn't meet the % dbh replacement requirements, so long as the buffer/screen is otherwise maintained.
  - c. Common areas with wooded areas in excess of one (1) acre are exempt from the % dbh replacement requirement so long as the association/apartment provides a forestry management plan to City Administration for approval, and the City approves said plan. Said plan shall provide details on timing and extent of removals/replacements, size and species of replacements and forester's or arborist's explanation of how and why said plan is appropriate, maintains canopy and ensures viability of said area. Once a forestry management plan is approved, the association/apartment may follow said plan without having to obtain permission for tree removals/replacements for said areas so long as the plan is followed. A new, extended, or otherwise modified plan would need prior City approval.
  - d. For all other common areas, the 100% requirement in subsection (2) applies. However, condominium associations, homeowners associations and apartment complex owners may seek a partial waiver of the 100% replacement requirement when 100% replacement is not practical and/or not suitable. Such written waiver request shall include a proposed removal/replacement plan and be submitted to City Administration for review and consideration. If the plan is acceptable then the City Manager may reduce the replacement requirement, but not less than 50% replacement.
  - e. Nothing in this subsection (14) exempts condominium associations, homeowners associations and apartment owners from complying with all other regulations, including, but not limited to, those pertaining to landmark trees and historic trees.
  - f. Waiver of % dbh requirements of subsection (2) is for permitted tree removals under Sec. 20-79 only. Sec. 20-80 provisions for unpermitted tree removals continue to apply to condominium associations, homeowners associations and apartment complexes.

- g. The nominal activity provisions for the removal of three protected trees per year do not apply to common areas owned by condominium associations, homeowners associations or apartment complexes.
- h. Should common area trees in a wooded area be destroyed by a natural disaster (including, but not limited to, widespread disease, tornados, or straight-line winds), such wooded area must be re-established in a reasonable matter of time. The association or complex owner shall submit a re-establishment plan for City Administration approval should the needed replacement be proposed to take longer than one (1) year.

**Sec. 20-80. - Unpermitted tree removal.**

Should trees be removed without city permission, the following shall apply:

- (1) *Replacement rate for protected trees.* All conditions of section 20-81 shall apply, except that unpermitted tree removal, other than landmark and historic trees, must be replaced at a rate of 150 percent of the total dbh removed instead of 100 percent.
- (2) *Replacement rate for landmark and historic trees.* All conditions of section 20-81 shall apply, except that unpermitted removal of landmark trees and historic trees must be replaced at a rate of 200 percent of the total dbh removed instead of 150 percent.
- (3) Replacement rate for trees that are identified on an approved site plan approval, special exception approval, subdivision plat approval, or condominium approval must be replaced at a rate of 150 percent of the total dbh removed.
- (4) *Other relief.* In addition to the foregoing, the city may also elect to pursue court action against the land owner and/or tree remover for the wrongful removal of any tree and seek whatever relief it deems appropriate under the particular circumstance. Further, the land owner and/or tree remover is also subject to any and all penalties and requirements set forth in other ordinances, as any violation under this chapter constitutes an ordinance violation.
- (5) For any tree that is not permitted to be removed, it shall be considered an “improper tree removal” under this section to take any steps or allow any condition to occur that would create stress or otherwise negatively impact said tree such that its life expectancy is shortened to the point of needing to be removed or becoming a danger to persons or property in the surrounding area.

**DIVISION 9. – TREE SUBCOMMITTEE**

**Sec. 20-85. - Tree Subcommittee – Board Composition.** A tree subcommittee shall be established by City Council and shall consist of five (5) members, three (3) of which shall be current City Council members and the other two (2) members shall be Rochester residents. While not a requirement, it is the preference that one of the resident members be a representative of one of the homeowners associations, condominium associations, or apartment complexes. Tree subcommittee members shall be appointed by the Mayor with the concurrence of City Council. Subcommittee member appointments shall be for two (2) year terms. Subcommittee members may be re-appointed. A City

Council subcommittee member appointment shall terminate if the member shall cease being a City Council member.

**Sec. 20-86. – Tree Subcommittee duties.** The duties of the tree subcommittee include, but are not limited, to the following:

- (a) The tree subcommittee shall consider and act on requests to remove landmark and historic trees as set forth in Sec. 20-73;
- (b) The tree subcommittee shall consider and provide guidance and recommendations to City administration regarding the types and location of off-site tree replacements and tree fund utilization.
- (c) The tree subcommittee may consider and provide advisory opinions and assistance on any matter referred to it by City Council or the City Manager relating to trees including the application of the City’s Tree Ordinance; and
- (d) The tree subcommittee will provide an annual update to City Council regarding its efforts including, but not limited to, decisions made, recommendations on ordinance modifications and tree canopy updates.

**THIS ORDINANCE** shall become effective immediately upon publication.

A true copy of this ordinance may be purchased or inspected at the office of the City Clerk at the Rochester Municipal Building, 400 Sixth Street, Rochester, Michigan, 48307, during regular business hours, 8:00 a.m. to 5:00 p.m. daily, except weekends and holidays.

Made and passed by the City Council of the City of Rochester, State of Michigan, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF ROCHESTER

A Michigan Municipal Corporation

By: \_\_\_\_\_  
Stuart Bikson, Mayor