

5-O-11

AN ORDINANCE

**Amending Title 7, "Public Ways"
Chapter 8, "Trees and Shrubs" of the Evanston City Code
to add Section 8, "Tree Preservation"**

**NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That Title 7, "Public Ways", Chapter 8, "Trees and Shrubs" of the Evanston City Code of 1979, as amended (City Code), is hereby further amended by adding Section 8, "Tree Preservation", to read as follows:

7-8-8: TREE PRESERVATION

7-8-8-1: PURPOSE AND INTENT:

- A. Purpose And Intent: This chapter governs the maintenance, protection, removal, and replacement of existing public trees, private trees located on any parcel of two (2) acres or more planned for a subdivision, and private trees within a Planned Development within the City of Evanston, in order to protect and preserve the urban landscape and to fulfill the objectives identified in the Evanston Comprehensive Plan.
- B. Objectives: The protection of trees as a valuable community resource also accomplishes the following objectives:
1. Stabilize valuable topsoil by preventing or minimizing unnecessary soil erosion and sedimentation;
 2. Assist in proper storm water runoff in order to decrease the costs associated with flooding;
 3. Protect the important link in the hydrologic cycle that trees provide through the transpiring of water and the neutralization of wastes that pass through to the ground water table and other aquifers;
 4. Aid in the reduction of air pollution through the removal of harmful carbon dioxide and the generation of oxygen;

5. Provide a buffer and screen against noise pollution;
6. Provide a haven and nesting areas for birds, insects, and other forms of wildlife that are essential to the maintenance of the food chain and that help control and eliminate disease carrying mosquitoes;
7. Reduce energy consumption through the windbreak and shade effects of trees;
8. Protect and increase property values in a manner that maintains each property owner's enjoyment of his or her property;
9. Conserve and enhance the City's physical and aesthetic environment;
10. Eliminate trees that constitute a threat, danger, or nuisance to the public or to property in the City, or that may be dangerous to the health of other trees and vegetation in the City;
11. Protect and enhance the quality of life and the general welfare of the City and its residents; and
12. Restore, to the greatest extent possible, denuded soil that results from construction and grading work accompanying development.

7-8-8-2: APPLICATION AND ENFORCEMENT OF PROVISIONS:

- A. Generally: This section applies to all areas and zoning districts within the City, and will be applied and enforced by the City Manager or his/her designee. This section applies simultaneously with other consistent provisions of this code as well as state and federal law. If any inconsistency exists, the provision resulting in the maximum protection and preservation of the highest quality of trees will govern. No construction and/or building permits or approvals granted under any City regulation other than this section will authorize the damage, removal, or replacement of any trees in a manner which is not consistent with the provisions of this section.
- B. Modification Of Required Submittals: The City Manager or his/her designee may modify or waive portions of the tree permit application, tree replacement plan, tree replacement mitigation fee, or tree protection plan required by this section if the City Manager or his/her designee determines that the modification or waiver will be consistent with the purposes of this section.

7-8-8-3: DEFINITIONS:

For the purposes of this section, the following terms, phrases, and words have the meanings in this section. The terms, phrases, and words used in this section that are not defined in this section have the meanings otherwise ascribed to them elsewhere in this title.

ADMINISTRATIVE MANUAL: A document prepared by the City Manager or his/her designee at the direction of the City Council, upon consultation with the City Manager, for the purpose of implementing the regulations set forth in this section.

APPLICANT: Any person who files a tree permit application or is issued a tree permit, including the owner(s) of any property for which a tree permit application is filed or a tree permit is received.

CALIPER: The method of measurement used for nursery stock for new plantings by measuring the diameter of the trunk at a point six inches (6") above the existing grade or proposed planted grade for nursery trees up to and including four inches (4") in caliper, and at a point twelve inches (12") above the existing grade or proposed grade for nursery trees larger than four inches (4").

CITY: the City of Evanston, Illinois.

CITY MANAGER OR HIS/HER DESIGNEE: The chief administrative officer of the City of Evanston, Illinois or an individual designated by the City Manager as his/her designee of the City, or any other person as may, from time to time, be specifically appointed by the City Manager to carry out all or any part of the functions of the City Manager under this section.

CITY SUBDIVISION ORDINANCE: Title 4, Chapter 13 of this code.

CONSERVANCY AREA: An area designated on a recorded plat, deed or covenant to protect the natural features of the area.

CONSTRUCTION ACTIVITY: Any of the following listed activities, but only if, and only to the extent that, the activity anticipates or involves the actual or reasonably likely damage or removal of any tree, as determined by the City Manager or his/her designee:

- A. The erection, exterior alteration, exterior repair, exterior renovation, demolition, or removal of a building or structure of any kind.
- B. The paving, resurfacing, or installation of any impervious surface including, without limitation, driveways, patios, and decks.
- C. The excavation, filling, grading, or clearing of all or any portion of a lot.
- D. Any exterior or interior construction that requires the placement of a dumpster, or other similarly sized trash or refuse receptacle, on the subject property.

CONSTRUCTION ACTIVITY AREA: The area of the subject property identified as the construction activity area on the tree protection plan pursuant to this section.

CRITICAL ROOT ZONE: The area inscribed by an imaginary circular line on the ground beneath a tree having as its center point the center of the trunk of the tree and a radius equal to one foot (1') for every inch of the tree's dbh.

CRITICAL ROOT ZONE PROTECTION: The physical protection of the critical root zone in order to prevent damage to tree roots by soil compaction or other means. "Critical root zone protection" may be required by the City Manager or his/her designee for specified trees within the construction activity area.

DAMAGE: The death of a tree or a significant loss of a tree's structural integrity including, without limitation, destruction; extraction; spraying; poisoning; carving; mutilating; girdling; severing the main trunk, leader, large branches or roots; removing any portion of the bark from the main trunk or from large branches; touching with live wires; crushing or exposing the roots; digging or drilling any hole or trench within the critical root zone; filling with soil or other materials within the critical root zone or compacting a substantial portion of the soil in the critical root zone; or moving a tree to another location. "Damage" does not include the pruning of trees in accordance with the national pruning standards.

DIAMETER BREAST HEIGHT (dbh): The method for measurement of trees other than nursery stock, calculated as the diameter of the trunk of a tree measured in inches at a point four and one-half feet ($4\frac{1}{2}$ ') above the existing grade at the base of the tree.

DISEASED TREE: Any tree specified in section 7-8-6 of this chapter.

EXOTIC AND INVASIVE SPECIES: Those species of vegetation that interfere with the health of trees as set forth in appendix A, section 7-8-12 of this chapter as listed under Species Group D.

LOT: A parcel or parcels of land as defined in section 6-18-3 of this code.

NATIONAL PRUNING STANDARDS: "Standard Practices For Tree, Shrub, And Other Woody Plant Maintenance" (ANSI 300) and "Tree Pruning Guidelines", published by the International Society of Arboriculture, as set forth in appendix D to this chapter, which appendix is on file in the office of the City Clerk.

NURSERY STOCK STANDARDS: The "American Standards For Nursery Stock", as approved by the American Standards Institute, Inc., issued as ANSI Z60.1-1990.

PERSON: Any public or private individual, group, company, firm, corporation, partnership, association, society, or any other combination of human beings, whether legal or natural.

PLANNED DEVELOPMENT: Any parcel falling under the Planned Development regulations as stated in Title 6, Chapter 3, Section 6-3-6 of the Evanston City Code.

PROTECTED TREE: Any tree specified in section 7-8-8-4 of this chapter.

PRUNING: The cutting or trimming of trees in accordance with the national pruning standards.

PUBLIC RIGHT OF WAY: Any right of way, thoroughfare, avenue, road, highway, boulevard, parkway, drive, way, lane, or court dedicated to the public.

PUBLIC TREE: Any tree located on any public right of way.

REGULATED ACTIVITY: Any activity specified in section 7-8-8-5 of this chapter.

REMOVE OR REMOVAL: The physical detachment or elimination of a tree, or the effective detachment or elimination of a tree, through damage or otherwise.

SUBDIVISION: A change or division of any parcel of land pursuant to title 4, chapter 13 of this code.

SUBJECT PROPERTY: Any lot affected, in whole or in part, by a regulated activity. "Subject property" may include lots other than the lot on which the regulated activity takes place.

TREE: A self-supporting, woody plant, together with its root system, having a well defined stem or trunk or a multi-stemmed trunk system and a more or less well defined crown. The word "tree" does not include containerized trees or nursery stock trees maintained for resale. Any reference to the location of a "tree" refers only to the location of that portion of the trunk of the "tree" that is at a point four and one-half feet ($4\frac{1}{2}'$) above the existing grade at the base of the "tree".

TREE CARE STANDARDS: The tree care standards set forth in appendix C to this chapter, which appendix is on file in the office of the City Clerk.

TREE EMERGENCY: The existence of any tree within the City that has become an immediate danger or hazard to persons or property as a result of any tornado, windstorm, flood, freeze, natural disaster, or otherwise.

TREE INVENTORY: The tree inventory specified in subsection 7-8-8-8 C of this chapter.

TREE PERMIT: The permit required pursuant to section 7-8-8-6 of this chapter.

TREE PERMIT APPLICATION: The application required for issuance of a tree permit pursuant to section 7-8-8-6 of this chapter.

TREE PROTECTION AREA: The area of the subject property identified as the tree protection area on the tree protection plan pursuant to section 7-8-8-8 of this chapter.

TREE PROTECTION PLAN: The plan required pursuant to section 7-8-8-8 of this chapter.

TREE REPLACEMENT MITIGATION FEE: The fee paid in lieu of tree replacement pursuant to subsection 7-8-8-7G of this chapter.

TREE REPLACEMENT PLAN: A written plan that identifies each tree that will be damaged or removed and the method by which any damaged or removed tree will be replaced pursuant to section 7-8-8-7 of this chapter.

TREE SPECIES STANDARDS: The "Species Ratings & Appraisal Factors For Illinois", as published by the Illinois Arborist Association.

TREE SURVEY: The survey required pursuant to subsection 7-8-8-8-C of this chapter.

7-8-8-4: PROTECTED TREES:

A. Identification Of Trees By Group: Trees within the City are defined into four (4) groups, groups A, B, C, and D, based on ratings provided in the tree species standards for species characteristics including environmental adaptability, biological traits, longevity, maintenance needs, and landscape value. Group A trees are the highest rated trees and group D trees are the lowest rated. The complete list of species in each group is set forth in appendix A, section 7-8-8-13 of this chapter.

B. Protected Trees Designated:

1. Protected trees are those trees in groups A, B, and C with the minimum dbh listed below:

<u>Protected Trees</u>	<u>Minimum DBH</u>
All public trees	2 inches
Group A	3 inches
Group B	6 inches
Group C	10 inches

2. When a protected tree has a multi-stemmed trunk system, the minimum dbh shall be determined utilizing the trunk having the largest measurement as determined by a calculation in inches at a point four and one-half feet (4.5') above the existing grade at the base of the tree.

- C. Exclusions: Protected trees do not include trees with a dbh below the minimum dbh as provided in subsection B of this section, or group D trees.

7-8-8-5: REGULATED ACTIVITIES:

- A. Regulated Activities Designated: The following activities are regulated activities and are subject to the provisions of this Section:

- 1. Any activity that will cause, or is reasonably likely to cause, the damage or removal of a tree or trees with a dbh of two inches (2") or greater, including, without limitation:

- a. The subdivision of property measuring two (2) acres or larger pursuant to the City subdivision ordinance;

- b. Any activity commenced pursuant to a planned development granted in accordance with this Code;

- c. Any activity on public or private property requiring the issuance of any permit pursuant to any City ordinance, including, without limitation, grading, building, sewerage, water, plumbing, or other permits; and

- d. Any activity involving construction, earthmoving, demolition, or vehicular traffic, or any similar activity, occurring within a critical root zone of a protected tree, with the exception of regularly scheduled maintenance activities performed by City of Evanston employees.

- 2. The removal of exotic and invasive species with a dbh of two inches (2") or greater.

- B. Limitation on Damage or Removal of Trees: This section applies to the damage or removal of any tree in the course of the regulated activities described in this section. All regulated activities must be planned and performed in a manner, to a degree, and with sufficient equipment and personnel so as to: 1) reasonably involve the least amount of damage or removal of trees; and 2) not defeat or be inconsistent with the purposes and intent of this section.

- C. Regulated Activities Involving Construction: An applicant for any regulated activity involving construction activity must submit a tree protection plan in accordance with subsection 7-8-8-8 of this chapter and a tree replacement security in accordance with subsection 7-8-8-7-J of this chapter.

7-8-8-6: PERMIT REQUIREMENTS:

- A. Permit and Compliance Required: No person may conduct or will be entitled to any permit for any activity associated with a regulated activity unless a valid tree permit

for the activity is issued in accordance with this section. No person will be entitled to any tree permit unless the subject property, upon the issuance of the tree permit, is in strict compliance with the terms and provisions of this section and the terms and provisions of all other applicable laws, ordinances, rules, and regulations of the City and of all other governmental agencies having jurisdiction.

B. Exceptions:

1. Pruning: A tree permit is not required for the pruning of any private tree in compliance with the national pruning standards.
2. Tree and City Emergencies: In response to notice of an existing tree emergency, the Mayor or the City Manager or his/her designee, are each authorized to waive the requirement for a tree permit or tree permit application. If a tree emergency occurs, the person endangered by the tree emergency may take any reasonable action necessary to avoid or eliminate the immediate danger or hazard. The action taken must be an action that is least likely under the circumstances to cause damage or removal of any trees, and the City assumes no responsibility or liability for any action taken. The person taking the action must report the action taken to any of the above City officials immediately after the action is taken and file an after-the-fact tree application permit within forty eight (48) hours, which the City Manager or his/her designee will review. If the City Manager or his/her designee determines that a tree emergency existed which justified the damage or removal of the tree(s), an after-the-fact tree permit will be issued with no permit fee charged. If the City Manager or his/her designee determines that no emergency existed to justify the damage or removal of the tree(s), then the action will be deemed a violation of this section, and the damaged or removed tree(s) must be replaced pursuant to this section.
3. City-Let Projects: Tree Permits will be required for all City-let projects which have been reviewed by the Parks/Forestry Division, but all permit fees will be waived.

C. Application For Permit: Any person desiring or required to obtain a tree permit must submit a tree permit application to the City Manager or his/her designee on a form provided by the City setting forth or otherwise providing the following information:

1. Required Information For All Applications:

- a. Applicant's name and address.
- b. Location of the subject property on which the regulated activity will occur, including the street address or legal description, and the legal and beneficial owner of the subject property.
- c. Legal relationship of the applicant to the subject property.
- d. The signature of the applicant and the owner of the subject property.

e. Size of the subject property.

f. If all or part of the subject property is located within a conservancy area, any recorded plat, deed, or covenant that indicates or describes the location and restrictions of the conservancy area.

g. Number, size, species, and condition of trees that will be damaged or removed in the course of the proposed regulated activity.

h. Number, size, species, and condition of trees that may be damaged or removed in the course of the proposed regulated activity or any related activity, and steps to be taken to prevent the damage or destruction and any necessary remedial action.

i. Tree replacement plan in accordance with subsection 7-8-8-7 I of this chapter.

j. Tree replacement security in accordance with subsection 7-8-8-7 J of this chapter; except, that the City Manager or his/her designee may waive or modify this requirement pursuant to subsection 7-8-8-7 J5 of this chapter for certain tree permit applications unrelated to construction activity.

k. Other data and information as the City Manager or his/her designee deems necessary to allow full and fair consideration of the tree permit application and for compliance with the goals of this section.

2. Additional Information for Applications Involving Construction Activity: Tree permit applications relating to construction activity must include the following additional information:

a. Location, dimensions, and current and proposed use of existing and proposed buildings, structures, paved areas, utility lines and utility and access easements on and adjacent to the subject property.

b. Existing grades and proposed grades of the subject property and whether there have ever been any drainage or storm water runoff problems in connection with the subject property.

c. A tree protection plan in accordance with section 7-8-8-8 of this chapter.

3. Level Of Detail: The information required by this subsection may be submitted to the City Manager or his/her designee in the form, detail, and degree of accuracy as may be reasonably feasible without undertaking professional studies and surveys.

D. Action on Applications:

1. Inspection of Property: Upon receipt of a tree permit application, the City Manager or his/her designee or his designee will visit and inspect the subject property, as well

as contiguous and adjoining lands, to evaluate the information in the tree permit application.

2. Approval of Application; Issuance of Permit: The City Manager or his/her designee will, in a timely manner, review and approve the tree permit application and issue the tree permit if the City Manager or his/her designee determines that:

a. The proposed regulated activity will destroy or endanger no more trees than are reasonably necessary to achieve the applicant's objectives;

b. The tree permit application and all required submittals, including, without limitation, the tree replacement plan and, if required, the tree protection plan, each satisfy the requirements of this section;

c. The regulated activity will not be inconsistent with the purposes and intent of this section; and

d. The applicant has submitted the tree replacement security, if required, in compliance with this section.

3. Conditions on Approval: The City Manager or his/her designee may approve the tree permit application subject to the conditions necessary to protect the public welfare, achieve the purposes of this section, or to prevent undue damage or removal of trees.

4. Denial: If the City Manager or his/her designee determines that the tree permit application does not satisfy the provisions of subsection 7-8-8-6-C of this section or the purposes of this section, the City Manager or his/her designee will promptly notify the applicant that the tree permit application is denied.

E. Application and Permit Fees: An applicant must pay a fee of fifty dollars(\$50.00) for: 1) A tree permit application along with any consultant review fees incurred by the City in processing the tree permit application and, if a permit is granted; 2) a tree permit fee; provided, however, that no application or permit fee will apply to a tree permit or tree permit application concerning the removal of group D trees, trees with less than the minimum dbh set forth in subsection 7-8-8-4 B of this chapter, or diseased or dangerous trees pursuant to sections 7-8-1-2 and/or 7-8-6-1 of this chapter.

F. Posting Permit: The tree permit must be posted in a prominent location at the subject property until the completion of the removal of all trees contemplated by the tree permit.

G. Expiration and Renewal of Permit: Each tree permit will expire automatically if the regulated activity or other activity authorized by the tree permit is not commenced within six (6) months or completed within one year after the tree permit is issued;

provided, however, that the City Manager or his/her designee may, upon the written request of the applicant or the person to whom a tree permit has been issued, grant reasonable extensions of time for commencement or completion of the regulated activity or other activity authorized by the tree permit.

- H. Suspension or Revocation of Permit: Any tree permit issued under this section may be revoked or suspended by the City Manager or his/her designee if the holder of the tree permit violates the terms of the tree permit or any of the provisions of this chapter.

7-8-8-7: TREE REPLACEMENT:

- A. General Requirements: Any protected tree damaged or removed in the course of a regulated activity must be replaced by the applicant pursuant to this section and as depicted in a tree replacement plan pursuant to subsection 7-8-8-7-I of this section, regardless of whether the protected tree is located on the same lot on which the regulated activity takes place; except, that the City Manager or his/her designee may, pursuant to subsection 7-8-8-7-G of this section, consider a request to submit a fee in lieu of the replacement of trees, and except for the exemptions in subsection 7-8-8-7-B of this section. No replacement tree may have a caliper less than two and one-half inches (2½).
- B. Exemptions: Tree replacement will not be required if the City Manager or his/her designee determines that any of the following circumstances exist:
1. When a protected tree, due to natural causes, is dead, dangerous, or interferes with any existing or proposed public improvements, is in dangerous proximity to any public utility lines or related facilities, or is a diseased tree or dangerous tree or otherwise unsafe, unhealthy, or insect infested and constitutes a hazard to persons, property, or other trees.
 2. When a protected tree, due to natural causes, obstructs any street, sidewalk, or any pedestrian path to an extent that the protected tree interferes with free passage and clear view along the street, sidewalk or path, and at any street, alley or driveway intersection.
 3. When removal of a protected tree is necessary to comply with the current standards generally observed by professionals in the forestry profession.
 4. When the removal involves only the removal of class D trees or exotic and invasive species and does not involve any protected tree.
 5. When the protected tree to be removed is located within the foundation footprint of an addition which creates additional gross floor area for an existing structure; provided, that the combined gross floor area for the existing structure and the addition is compliant with the maximum gross floor area restrictions for the structure

under this Code and that the addition does not require any variations. In this event, replacement trees will be required only for fifty percent (50%) of the removed protected trees within the construction footprint, at the replacement rate set forth in subsection 7-8-8-7-C of this section.

- 6. When the protected tree to be removed is located within the foundation footprint of an addition which creates additional gross floor area for a structure designated as a landmark pursuant to this code; provided, that the combined gross floor area for the existing structure and the addition is compliant with the maximum gross floor area restrictions for the structure under this Code, that the addition does not require any variations, and that the City Historic Preservation Commission has conducted an advisory review pursuant to this code and determined that the addition is consistent with the purposes and goals of the City Historic Preservation Commission regulations. In this event, replacement trees will not be required for the removed protected trees within the construction footprint.
- 7. When the removal of a protected tree is due to a pre-existing conflict with existing underground utilities and obstructs the repair or replacement of those utility services, and there is no reasonable alternative method to re-route the utility line to avoid removal of the tree.

C. Replacement Formula: Protected trees must be replaced by group A trees pursuant to the replacement rate specified in this subsection. The tree replacement rate is determined by the species of tree removed. For each inch of dbh removed, replacement trees must be provided at the rate shown in the following table. For example, for every inch in diameter of a removed group A tree, each inch removed must be replaced with 1.25 inches in diameter of replacement trees:

Species Removed	Diameter Of Tree Removed	Replacement Rate
All public trees	1 inch	125 percent
Group A	1 inch	125 percent
Group B	1 inch	75 percent
Group C	1 inch	50 percent

D. Specifications: All replacement trees must be:

- 1. Provided by the applicant at the replacement rate specified in subsection 7-8-8-7-C of this section;
- 2. Of a species listed in group A set forth in appendix A, section 7-8-8-13 of this chapter;

3. At least two and one-half (2 ½) caliper inches;
 4. Grown within the northeast Illinois region or within a 75 mile radius of Evanston;
 5. In conformance with the nursery stock standards; provided, however, that in the event that the implementation or enforcement of the nursery stock standards conflicts with the implementation or enforcement of the tree care standards, the provisions of the tree care standards will control;
 6. Pursuant to a written time schedule approved by the City Manager or his/her designee;
 7. Planted in a location approved in advance by the City Manager or his/her designee; and
 8. Inspected by the City Manager or his/her designee prior to planting.
- E. Care of Replacement Trees: The applicant will be solely responsible for the care and feeding of newly planted trees for a period of two (2) years, which time shall commence upon the issuance of a final certificate of occupancy for the property as required pursuant to the City building regulations or, if no final certificate of occupancy is required, upon completion of the tree replacement plan as determined by the City Manager or his/her designee pursuant to subsection 7-8-8-7-I of this section. The care and feeding of newly planted trees must, at a minimum, adhere to the tree care standards.
- F. Alternative Locations: The City Manager or his/her designee may reduce the number of replacement trees to be planted on the subject property and designate alternative locations for new trees on the subject property upon determining that full tree replacement will result in unreasonable crowding of trees or would be otherwise inconsistent with current standards generally observed by forestry professionals. If the City Manager or his/her designee cannot identify an appropriate alternative location on the subject property for a tree, that tree may be replaced by a fee in lieu of replacement pursuant to subsection 7-8-8-7-G of this section.
- G. Fee In Lieu Of Replacement:
1. Modification Of Tree Replacement Requirement: The City Manager or his/her designee may permit the applicant to pay a fee in lieu of any portion of the tree replacement requirements if the City Manager or his/her designee determines that replacing trees at the full replacement rate provided by subsection 7-8-8-7-C of this section would:
 - a. Result in the unreasonable crowding of trees upon the subject property or upon a public right of way immediately adjacent to the subject property; or

- b. Adversely impact the viability of existing trees on the subject property; or
- c. Not be consistent with the current standards generally observed by professionals in the forestry profession.

2. Calculation of Fee: Upon a determination by the City Manager or his/her designee that an applicant has demonstrated one or more of the above, in lieu of providing replacement trees at the required replacement rate, the tree replacement plan will be modified to require the applicant to: a) replace the tree(s) at the replacement rate in subsection 7-8-8-7-C of this section; and b) pay a tree replacement mitigation fee of one-hundred and fifty dollars (\$150.00) per caliper inch. All tree replacement mitigation fees collected by the City will be used to promote the purposes of planting and maintaining trees in the City.

H. Waiver or Modification of Provisions: Where a previous zoning or subdivision approval contains conditions which fully accomplish the goals and purposes of this Section, the City council may waive or modify the requirements of this section. The waiver or modification may be revoked at any time that any condition imposed pursuant to the approval is violated.

I. Tree Replacement Plan:

1. Required: A tree replacement plan must be filed with all tree permit applications for a regulated activity involving the replacement of one or more protected trees.

2. Contents of Plan: A tree replacement plan must contain the following information:

a. A brief description of the applicant's plan for the replacement of protected trees in accordance with the requirements in this section. The description must specifically include, without limitation, the replacement and planting methods and technologies that the applicant intends to employ in order to satisfy the requirements of this section.

b. The number, size, species, and proposed location of the trees that the applicant is required to plant or replant, if any, pursuant to the requirements of this section.

c. Other data and information as the City Manager or his/her designee deems necessary in order to comply with the requirements of this Section, as set forth in the administrative manual.

3. Inspection; Compliance with Plan: Upon notification from the applicant that the requirements of the tree replacement plan have been completed, the City Manager or his/her designee will inspect the property to determine compliance with the tree replacement plan. No final certificate of occupancy may be issued for the property until the City Manager or his/her designee approves of the implementation of the tree replacement plan.

J. Security Requirements:

1. Security Required: Every tree replacement plan must be accompanied by a tree replacement security, except as modified or waived by the City Manager or his/her designee pursuant to subsection 7-8-8-7-J-5 of this section. The tree replacement security must consist of:
 - a. A cash deposit to be held in escrow by the City;
 - b. An irrevocable letter of credit issued by a lender authorized to issue the letter by any state or by the United States;
 - c. A bond with good and sufficient surety; or
 - d. Another form of security approved by the City Manager.
2. Amount: The amount of the tree replacement security will be determined by the City Manager or his/her designee and must be equal to three (3) times the total actual cost of strictly complying with and fully implementing the tree replacement plan, with any applicable adjustment for cost of living increases and/or inflation.
3. Replenishment Of Security: If, at any time, the City Manager or his/her designee determines that the funds remaining in the tree replacement security are not or may not be sufficient to pay, in full, the total actual costs of strictly complying with and fully implementing the tree replacement plan, then, within ten (10) days following a demand by the City, the applicant must increase the amount of the tree replacement security to an amount determined by the City Manager or his/her designee to be sufficient to pay the uncovered costs. Failure to so increase the amount of the tree replacement security will be grounds for the City to retain or draw down any remaining balance of the tree replacement security.
4. Return Of Security: Upon completion of the tree replacement plan pursuant to subsection 7-8-8-7-I-3 of this section, the tree replacement security, or any remainder thereof, will be returned or released to the applicant.
5. Limited Waiver: Where a tree permit application concerns the damage or removal of trees unrelated to construction activity, the City Manager or his/her designee may, modify or waive the requirement for submittal of the tree replacement security if the City Manager or his/her designee determines that the tree replacement security is not necessary for the limited damage or removal and that the purposes of this section will be fulfilled without submittal of the tree replacement security.

K. Failure to Comply:

1. Notice: If, at any time, the City Manager or his/her designee determines that the applicant has failed to comply with or implement the tree replacement plan, the City

Manager or his/her designee will cause notice of the failure to be served upon the applicant and will order the applicant to fully comply with the tree replacement plan within fourteen (14) days following mailing or personal delivery of the notice. The notice must be personally served or sent by certified mail, return receipt requested, to the applicant and must notify the applicant that, absent an appeal pursuant to subsection 7-8-8-7-K-3 of this section, unless full compliance with the tree replacement plan is achieved within fourteen (14) days from the date of mailing or personal delivery of the notice, the City may proceed to perform or cause to be performed work the City Manager or his/her designee determines necessary to achieve full compliance with the tree replacement plan.

2. Opportunity To Comply: Absent an appeal pursuant to subsection 7-8-8-7-K-3 of this section, within thirty (30) days following mailing or personal delivery of the required notice, the applicant must take action as is necessary to strictly comply with and implement the tree replacement plan.
3. Appeal: Within fourteen (14) days following personal delivery or mailing of the required notice, the applicant may appeal the City Manager or his/her designee's determination by filing a written notice of appeal with the City Manager. The filing of an appeal will toll the thirty (30) day period in which the applicant is required to take action pursuant to subsection 7-8-8-7-K-2 of this section from the date on which the City Manager receives the applicant's notice of appeal. Upon receipt of a notice of appeal, the City Manager will review all reliable and relevant documents and information pertaining to the City Manager or his/her designee's determination. The City Manager must render a written decision on the appeal no later than fourteen (14) days after the City Manager receives the written notice of appeal. The City Manager must notify the applicant of the City Manager's decision within two (2) days after the decision and must provide the applicant a copy of the decision. The action taken by the City Manager will be final. The tolling of the thirty (30) day period will cease upon the applicant's receipt or notice of the City Manager's decision.
4. City Right To Complete Work: If the applicant neglects or refuses to fully comply with and implement the tree replacement plan within the thirty (30) day period during planting season pursuant to this subsection, then the City Manager or his/her designee, with the consent of the City Manager, and, if applicable, upon the denial of any applicable appeal, will be authorized to perform or to cause to be performed work necessary to ensure strict compliance with and full implementation of the tree replacement plan. The City Manager or his/her designee will have the right to deduct, liquidate, draw down, or apply an amount equivalent to three (3) times the actual costs of the work from the tree replacement security, as well as to exercise all other rights and remedies available to the City, including, without limitation, any applicable lien rights.

7-8-8-8: TREE PROTECTION PLAN:

- A. Plan Required: If a regulated activity includes construction activity, the applicant must, in addition to the tree replacement plan, submit a tree protection plan with the tree permit application.
- B. Construction Activity Area: The construction activity area is the area of the subject property that is the smallest area reasonably needed to undertake the proposed construction activity as determined by the City Manager or his/her designee. The construction activity area must include the entire area affected by the proposed construction activity and must also include any access route across the public right of way and the private tree preservation area. Construction activity must not be conducted or staged in any area of the subject property located outside the construction activity area. No excess soil, additional fill, liquids, or any construction debris may be placed or located outside the construction activity area. Any temporary buildings, structures, and driveways constructed for or associated with the construction activity must be located so as to reasonably involve the least amount of damage or removal of trees, but must nevertheless be consistent with minimum building setback requirements of this Code.
- C. Contents of Plan: A tree protection plan must consist of a site plan of the subject property upon which the information described in this subsection must be graphically and accurately marked.
1. Location of the subject property, including street address and legal description.
 2. Existing and proposed contours of the lot on which the construction activity is to take place.
 3. Existing and proposed buildings or structures on the lot.
 4. Proposed building elevations, if applicable.
 5. Proposed work access areas and routes.
 6. The name and contact information of the general contractor or project representative, if any, responsible for the proposed construction activity.
 7. A demonstration of the ways in which the applicant will ensure that the tree protection required by this section will be achieved.
 8. A tree inventory for the subject property, consisting of a list of the following trees, identified by tag number: a) all the existing protected trees on the subject property; b) all trees on adjacent properties that are within ten feet (10') of the property line or that have a critical root zone extending into the subject property; and c) all public trees adjacent to the subject property or that may be impacted by any regulated activity. The tree inventory must list, without limitation, the following data for each

tree: tag number, species, size in dbh, condition rating, form rating, and any observed problems.

9. A tree survey for the subject property, which depicts the location and tag number of each tree described in the tree inventory. The tree survey must include, without limitation, a legend referencing the tag number, dbh, species, general condition, and proposed disposition of existing protected trees located on or near the subject property and trees other than protected trees that are reasonably likely to be damaged or removed during the construction activity. The tree survey must also depict the planned location of all proposed trees to be planted or replanted on or near the subject property pursuant to the tree replacement plan.
 10. An action plan for the subject property, consisting of a listing of the trees on the subject property, in chart form, that identifies each tree by tag number and shows, for each tree, the following information: species, size in dbh, condition, form, percent of critical root zone saved, and the anticipated damage, removal, tree protection measures, or other action to be taken regarding each tree.
 11. Detailed specifications for maintenance and protection of protected trees and for the maintenance and protection of trees other than protected trees that are reasonably likely to be damaged or removed during implementation of the proposed construction activity, including, without limitation, proposed measures such as construction pruning, root pruning, critical root zone protection, installation of a retaining wall or high visibility fencing, and auguring of utility lines when auguring is determined by the City Manager or his/her designee to be necessary to improve the chances of tree survival.
 12. Detailed specifications for tree protection fencing on the subject property, to be placed at a minimum: a) along the property frontage from property line to property line to completely separate the construction activity area; and b) around the critical root zone of each protected tree. These specifications must also include the identification and clear delineation on the site plan of the construction activity area and the tree protection area and their respective perimeters.
- D. Protection Area: The tree protection area is the area of the subject property not included in the construction activity area. No construction activity may be conducted in the tree protection area. All reasonable measures and protective materials must be employed to preserve and safeguard trees located within the tree protection area. Protective materials must include, without limitation, the temporary installation of high visibility fencing or other similar materials in the sizes and at the locations specifically approved by the City Manager or his/her designee. All protective measures and materials must be in place and approved by the City Manager or his/her designee prior to the commencement of any construction activity. Protective materials may not be removed until the City Manager or his/her designee approves the removal after the completion of all construction activity. No attachments, fences,

or wires, other than those approved for bracing, guying, or wrapping, may be attached to any protected tree during the construction activity.

E. Stop Work Order:

1. If the protective measures and materials required by this section, or any other related measures or materials otherwise required by this section, are not fully implemented and completely constructed prior to commencement of construction activity, the City Manager or his/her designee may issue a stop work order until the applicant fully complies with the requirements of this section.
2. If protective measures and materials constructed and employed on the subject property are not adequately maintained in a manner that protects protected trees and the tree protection area, the City Manager or his/her designee may issue a stop work order until the measures and materials are repaired, restored, and constructed to the satisfaction of the City Manager or his/her designee.

7-8-8-9: INSPECTIONS AND SURVEYS:

The City Manager or his/her designee will, on a regular basis, conduct inspections and surveys as necessary to monitor the trees in the City and to determine the existence, nature, and extent of violations of this section.

7-8-8-10: APPEALS:

- A. Overview: The appeal procedure is provided as a safeguard against arbitrary, ill considered, or erroneous administrative decisions. It is intended to avoid the need for resort to legal action by establishing local procedures to review and correct administrative errors. It is not, however, intended as means to subvert the clear purposes, meanings, or intents of this section or the rightful authority of the City Manager or his/her designee to enforce the requirements of this section. To these ends, the reviewing body should give all proper deference to the spirit and intent embodied in the language of this section and to the reasonable interpretations of that language by those charged with the administration of this section.
- B. Appeal To City Manager: Appeals from any decision of the City Manager or his/her designee may be taken by an applicant or any other person adversely affected by the decision by filing a written notice of appeal with the City Manager within five (5) days following receipt or notice of the City Manager or his/her designee's decision. Upon receipt of the written notice of appeal, the City Manager will review the relevant evidence, documents, or information, and may receive and consider new evidence. The City Manager will render a written decision and transmit such decision to the appealing party within fourteen (14) days after receipt of the written notice of appeal. The decision of the City Manager will be final except for appeals to the City council pursuant to subsection 7-8-8-7-C of this section.

- C. **Final Appeal To City Council:** In cases concerning tree replacement requiring a replacement rate pursuant to subsection 7-8-8-7-C of this chapter of one hundred inches (100") or more, a party may appeal the City Manager's decision to the City Council within fourteen (14) days after its transmittal to that party by filing a written notice of final appeal with the City Council. Upon receipt of the written notice of final appeal, the City Council will review the relevant evidence, documents, or information and may receive and consider new evidence. Within thirty (30) days after receipt of the written notice of final appeal, the City Council will render a written decision at a regularly scheduled meeting. Such decision may reverse, affirm, or modify, in whole or in part, the action appealed from and may include such order or determination as, in the opinion of the City Council, is proper to be made in the circumstances. If no regularly scheduled meeting occurs within thirty (30) days of receipt of the notice of final appeal, the City Council will render its written decision at the next regularly scheduled meeting thereafter. The written decision of the City Council will be final.
- D. **Stay Of Regulated Activities:** The filing of a written notice of appeal pursuant to this section will operate as a stay of the regulated activities related to that appeal, and no such regulated activity may proceed until a final decision is rendered on the appeal pursuant to this section.

7-8-8-11: PRIOR DESTRUCTION:

If any Public Tree or Protected Tree is damaged or destroyed prior to the submission of a tree removal permit application, or a demolition, grading or building permit application, and it is reasonable to infer that the damage or destruction was effected so as to avoid the requirements of this Ordinance, the City Manager or his/her designee may require mitigation for any such damaged or destroyed tree in addition to compliance with any other applicable requirements of this Ordinance.

7-8-8-12: PENALTIES:

Any person who neglects or refuses to comply with, violates, or assists in the violation of any of the provisions of this section, or any order, permit, or notice issued pursuant hereto, will be subject to a fine of not less than one-hundred dollars (\$100.00) nor more than one-thousand five-hundred dollars (\$1,500.00) for each violation. Each tree which is removed or damaged will constitute a separate violation. Each day any violation continues will constitute a distinct and separate violation. In addition to the penalties provided in this section, any damaged or removed tree must be replaced pursuant to the tree replacement requirements of this section.

7-8-8-13: APPENDIX A, SPECIES RATING GUIDE:

The intent of this guide is to identify tree species by genetic quality and community value and to assign them to a species group based on these two (2) criteria. The species groups are noted as A, B, C, and D. Species group A is the most highly rated group. Species group D is the lowest rated group and includes the tree species that are

not protected in this section. The species rating guide is the basis for assessing the relative value of trees to be protected and mitigated if they are damaged or removed.

This guide represents the tree species that are considered to be the most common tree species in the community. This guide is not an attempt to list all tree species that could successfully grow in the community. In the event that the City Manager or his/her designee encounters a tree species that is not listed in this rating guide, then it shall be the responsibility of the City Manager or his/her designee to assign that tree species to the appropriate species group.

SPECIES GROUP A	
Canopy trees:	
Acer saccharum	Sugar maple
Aesculus glabra	Ohio buckeye
Carya cordiformis	Bitternut hickory
Carya ovata	Shagbark hickory
Celtis occidentalis	Hackberry
Cladrastis lutea	American yellowwood
Corylus colurna	Turkish filbert
Fagus grandiflora	American beech
Fagus sylvatica	European beech
Ginkgo biloba	Ginkgo (male)
Gymnocladus dioicus	Kentucky coffeetree
Quercus alba	White oak
Quercus bicolor	Swamp white oak

Quercus ellipsoidalis	Hill's oak
Quercus imbricaria	Shingle oak
Quercus macrocarpa	Bur oak
Quercus muehlenbergii	Chinquapin oak
Quercus prinus	Chestnut oak
Quercus rubra	Red oak
Tilia Americana	American linden (basswood)
Ulmus americana	American elm
Understory/ornamental trees:	
Acer campestre	Hedge maple
Acer ginnala	Amur maple
Acer griseum	Paperback maple
Acer palmatum	Japanese maple
Amelanchier	Serviceberry
Carpinus caroliniana	American hornbeam (blue beech)
Cercis canadensis	Redbud
Chionanthus virginicus	White fringe tree
Cornus alternifolia	Pagoda dogwood
Cornus kousa	Kousa dogwood
Cornus mas	Cornelian cherry dogwood
Crataegus grus-galli	Cockspur hawthorn

	<i>Crataegus phaenopyrum</i>	Washington hawthorn
	<i>Malus</i> spp.	Crabapple
	<i>Ostrya virginiana</i>	American hophornbeam (ironwood)
	<i>Syringa pekinensis</i>	Pekin lilac
	<i>Syringa reticulata</i>	Japanese tree lilac
	Evergreen trees:	
	<i>Juniperous virginiana</i>	Eastern red cedar
	<i>Thuja occidentalis techny</i>	Techny arborvitae
SPECIES GROUP B		
	Canopy trees:	
	<i>Acer rubrum</i>	Red maple
	<i>Betula nigra</i>	River birch
	<i>Cercidiphyllum japonicum</i>	Katsura tree
	<i>Gleditsia triacanthos f. inermis</i>	Thornless honey locust
	<i>Juglans nigra</i>	Black walnut
	<i>Liriodendron tulipifera</i>	Tuliptree
	<i>Metasequoia glyptostroboides</i>	Dawn redwood
	<i>Phellodendron amurense</i>	Amur corktree

Platanus x acerifolia	London planetree
Populus tremuloides	Quaking aspen
Quercus palustris	Pin oak
Quercus robur	English oak
Sophora japonica	Japanese pagodatree
Taxodium distichum	Bald cypress
Tilia cordata	Littleleaf linden
Tilia x euchlora "Redmond"	Redmond linden
Ulmus sp.	Hybrid elm
Ulmus parvifolia	Chinese elm
Understory/ornamental trees:	
Aesculus parviflora	Bottlebrush buckeye
Aesculus pavia	Red buckeye
Alnus glutinosa	European alder
Betula platyphlla	Whitespire birch
Carpinus betulus	European hornbeam
Magnolia x soulangiana	Saucer magnolia
Parrotia persica	Persian parrotia
Prunus americana	American plum
Prunus padus	European bird cherry
Pyrus calleryana	Callery pear

Evergreen trees:		
Abies concolor		White fir (concolor fir)
Juniperus virginiana		Eastern red cedar
Picea abies		Norway spruce
Picea glauca		White spruce
Picea pungens		Colorado spruce
Pinus strobus		White Pine
Pseudotsuga menziesii		Douglas fir
SPECIES GROUP C		
Canopy trees:		
Acer platanoides		Norway maple
Catalpa speciosa		Catalpa
Fraxinus americana		White ash
Fraxinus Pennsylvanica		Green ash
Fraxinus quadrangulata		Blue ash
Liquidambar styraciflua		Sweetgum
Platanus occidentalis		Sycamore
Populus deltoides		Cottonwood (male)

Prunus serotina	Black cherry
Robinia pseudoacacia	Black locust
Salix alba	White willow
Salix nigra	Black willow
Salix niobe	Weeping willow
Ulmus rubra	Red elm
Ulmus thomasii	Rock elm
Understory/ornamental trees:	
Betula papyrifera	Paper birch
Crataegus laevigata	English hawthorn
Crataegus mollis	Downy hawthorn
Prunus virginiana	Common chokecherry
Sorbis americana	American mountain ash
Zelkova serrata	Zelkova
Evergreen trees:	
Pinus nigra	Austrian pine
Pinus resinosa	Red pine
Pinus sylvestris	Scotch pine

SPECIES GROUP D	
Acer negundo	Boxelder maple
Ailanthus altissima	Tree of heaven
Elaeagnus angustifolia	Russian olive
Morse speciosa	Mulberry spp.
Populus alba	White poplar
Populus deltoides	Cottonwood (female)
Populus nigra "Italica"	Lombardy poplar
Rhamnus cathartica	Buckthorn
Ulmus pumila	Siberian elm

SECTION 2: That the foregoing recitals are found as fact and made a part hereof.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That if any provision of this Ordinance 5-O-11 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid application of this Ordinance is severable.

SECTION 5: That this Ordinance 5-O-11 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: March 14, 2011

Adopted: March 28, 2011

Approved:

March 31, 2011

Elizabeth B. Tisdahl

Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene

Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar

W. Grant Farrar, City Attorney