

15-O-23

AN ORDINANCE

**Amending Title 7, Chapter 8 of the City Code Concerning The
Protection of Trees on Private Property**

WHEREAS, the City of Evanston has a long track record of action when it comes to climate change and has released a Climate Action and Resilience Plan (CARP) outlining the City's efforts to be a climate ready and resilient city, an Evanston Project for the Local Assessment of Needs (EPLAN) to improve the effectiveness and efficiency of the public health system in the City, and passed Resolution 32-R-22, Declaring a Climate Emergency and an Immediate Mobilization Effort to Restore Climate Stability; and

WHEREAS, the protection of plants, including trees on private property, in the City is critical to the City's goal of preserving, restoring, and expanding the City's urban tree canopy, natural habitat, species diversity, and green infrastructure; and

WHEREAS the benefits of the individual trees that make up Evanston's urban forest extend beyond property lines, so its management should be communal and consider all trees, regardless of property ownership; and

WHEREAS, the Evanston City Council finds it is in the best interests of the City, including its people, other plants, and wildlife, to amend the City Code to add protections for plants in the City, including trees on private property; and

WHEREAS, the Evanston Environment Board recommends that the Evanston City Council protect trees on private property as a matter of public health and

well-being, and to preserve the numerous benefits that the urban trees provide to the entire community.

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

SECTION 1: Section 7-8-8-1 “Purpose and Intent” of the Evanston City Code of 2012, as amended, is hereby amended as follows:

7-8-8-1. – PURPOSE AND INTENT

A. *Purpose and intent.* This Chapter governs the maintenance, protection, removal and replacement of existing public and private 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 forest and all of the benefits it provides to the community. Active management of Evanston’s tree canopy landscape and to fulfill the objectives identified in the Evanston Comprehensive Plan and the Climate Resilience Plan (CARP).

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 stormwater 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 groundwater 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;

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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.

SECTION 2: Section 7-8-8-4 “Protected Trees” of the Evanston City Code

of 2012, as amended, is hereby amended as follows:

7-8-8-4. - PROTECTED TREES.

A. *Identification of trees by group.* Trees species 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 ecosystem and habitat contributions, climate adaptability, management requirements, and physiological traits. ~~environmental adaptability, biological traits, longevity, maintenance needs, and landscape value.~~ Group A trees are the highest rated trees and most valuable trees and group D trees are the lowest rated and provide the fewest desirable ecosystem and community benefits. ~~A description of each group and the~~ The complete list of species in each group is set forth is in the City’s Tree Canopy Preservation Policy, as set forth in Appendix A, Subsection 7-8-8-13 of this Section.

B. *Protected Trees ~~trees~~ designated.*

1. Protected Trees ~~trees~~ are those trees in groups A, B, C, and D (as defined in the City’s Tree Canopy Preservation Policy) with the a minimum ~~dbh~~ DBH as listed below:

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

Group B	6 inches
Group C	10 6 inches
Group D	6 inches

2. When a ~~P~~protected ~~T~~tree has a multi-stemmed trunk system and has a maximum height of less than twenty (20) feet, the minimum ~~dbh~~ 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 (4.5) feet above the existing grade at the base of the tree. The DBH of a multi-stemmed Protected Tree with a maximum height greater than twenty (20) feet shall be calculated by aggregating the DBH of all trunks.

C. *Exclusions.* Protected trees do not include trees with a ~~dbh~~ DBH below the minimum ~~dbh~~ DBH as provided in Subsection B of this Section, ~~or group D trees.~~

SECTION 3: Section 7-8-8-5 “Regulated Activities” of the Evanston City

Code of 2012, as amended, is hereby amended as follows:

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 on public or private property within twenty five (25) feet of the trunk of any Protected Tree as defined in this Section, including: that will cause, or is reasonably likely to cause, the damage or removal of a tree or trees with a dbh of two (2) inches 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;~~

e. a. Any activity on public or private property requiring the issuance of any construction permit pursuant to any City ordinance, including, without limitation, excavating, digging, compacting, boring, or other construction or building activity within 25 feet of the trunk of any tree as outlined in the City’s Tree Canopy Preservation Policy grading, building, sewerage, water, plumbing, or other permits; and

~~d. b. Any activity involving construction, earthmoving, demolition, or vehicular traffic, or any similar activity, occurring within a critical root zone of a Protected protected Tree 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~~ DBH of two (2) inches or greater on public property and six (6) inches or greater on private property.

B. Exceptions. A tree preservation review is not required for certain types of permits when activity is not expected to impact any part of any tree (including the trunk, limbs, canopy, roots, etc.) or is entirely internal to a property. Permits that do not require a tree preservation review are in the Tree Canopy Preservation Policy.

BC. 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 Section and a tree replacement security in accordance with Subsection 7-8-8-7-J of this Section.~~

SECTION 4: Section 7-8-8-6, "Permit Requirements," of the Evanston City

Code of 2012, as amended, is hereby amended as follows:

7-8-8-6. – PERMIT APPLICATION AND REVIEW REQUIREMENTS.

A. ~~Permit and compliance required.~~ Submission Requirements for Tree Preservation Permits and Review. No person may conduct or ~~will~~ be entitled to any permit for any activity associated with a regulated activity unless a valid tree permit or review is completed ~~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.

1. Formal application. The City Manager, or designee, shall accept tree preservation permit applications and shall review once the application is considered complete.
2. Content of application. The application shall include the following information:
 - a. Name, address, and contact information of the property owner or contracted entity proposing regulated activities on the property;
 - b. The description of the regulated activity;

- c. A diagram, as described in the City's Tree Canopy Preservation Policy, depicting all existing trees, and their distance from current and proposed infrastructure and construction. Any trees proposed for removal shall be labeled;
- d. All other materials as described in the City's Tree Canopy Preservation Policy.

B. Procedure for Tree Preservation Plan Review and Permit Issuance.

- 1. Application: An application is complete when all required materials are received.
- 2. Action on Application: The City Manager or designee may perform a site visit and, within fourteen (14) days, shall, in writing, request additional information as necessary, or issue the tree preservation permit.
- 3. Permit Issuance. Upon approval or approval with conditions, the City Manager or designee shall notify the property owner or contracted entity and issue a tree preservation permit.

C. No construction. Tree removal of Protected Trees is not permitted if regulated activity as described in this Section is not proposed. The property owner(s) must request a variation from the Human Services Committee and City Council as outlined in Section 7-8-8-10.

1. Tree Replacement or Mitigation required. When a tree removal permit is granted, the tree preservation permit shall include the number of required replacement trees or a mitigation fee per Section 7-8-8-7.

D. B. Exceptions.

- 1. Pruning. A tree permit is not required for the pruning any private tree in compliance with the national industry-recognized pruning standards or if completed by a certified and qualified professional.
- 2. Tree and City emergencies. In the event that a tree may imminently cause harm to people and/or property, in response to notice of an existing tree emergency, the Mayor or the City Manager or his/her designee, are each is authorized to waive the requirement for a tree permit or tree permit application prior to removal or other work resulting in a significant impact to the Protected Tree. The property owner(s) and/or other person whose life or property may imminently be harmed by a hazardous tree if a tree emergency occurs, the person endangered by the tree emergency may take any reasonable action necessary to avoid or eliminate mitigate the immediate danger and/or hazard. This action must align with best practices developed by the International Society of Arboriculture (ISA) and ISA risk assessment algorithms that minimize the likelihood of inadvertent damage to or removal of any trees. 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

~~individual or entity taking the action must report all response activities the action taken to any of the above City officials as soon as safely possible immediately after the action is taken and file an after-the-fact tree application preservation permit application within forty-eight (48) hours, which the The City Manager or his/her designee will review the request and if the tree was sufficiently hazardous to justify damage to or removal of the tree(s), a retroactive. 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 preservation permit will be issued with appropriate fees but no penalties. with no permit fee charged. If the City Manager or his/her designee determines that the hazard was not sufficient 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) will be subject to permit and mitigation fees must be replaced pursuant to this Section.~~

3. ~~City-let led projects.~~ Tree preservation permits will be required for all City-let led projects which have been reviewed by the Public Services Bureau, but all permit fees will be waived.

4. Dead, extremely hazardous, imminently dying, Group D, or other invasive trees with a DBH greater than six (6) inches may be removed with a tree preservation permit, and mitigation is encouraged.

5. Trees on private property with a DBH of less than six inches (6") may be removed, and mitigation is encouraged.

SECTION 5: Section 7-8-8-7, "Tree Replacement," of the Evanston City

Code of 2012, as amended, is hereby amended as follows:

7-8-8-7. - TREE REPLACEMENT.

A. General requirements. Any ~~P~~Protected ~~T~~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(l) of this Section, regardless of whether the ~~P~~Protected ~~T~~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 G of this Section, consider a request to submit a mitigation fee in lieu of the replacement of trees, and except for the exemptions in Subsection B of this Section or as outlined in the City's Tree Canopy Preservation Policy. ~~No~~ Any replacement tree ~~may~~ shall have a caliper between one (1) and two (2) inches less than two and one-half (2½) inches.

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, extremely hazardous dangerous, ~~or interferes with any existing or proposed public improvements~~, is in dangerous proximity to any public utility lines or related facilities, or is imminently dying, sufficiently hazardous, ~~a diseased tree or dangerous tree~~ or otherwise unsafe, unhealthy, or insect infested such that it ~~and~~ constitutes a hazard to persons, property, or other plants or wildlife 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 the removal of a Protected Tree is necessary to comply with the current standards or best practices generally observed by certified and qualified forestry 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 (50) percent of the removed protected trees within the construction footprint, at the replacement rate set forth in Subsection 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.~~

47. 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 on public property must be replaced by Group A trees pursuant to the replacement rate specified in this Subsection. When a tree removal permit is issued, Protected Trees on private property shall be replaced with Group A or B trees, or other high-ecosystem value native trees as approved by the City Manager or designee. The tree replacement rate is determined by the group designation (public, A, B, C, or D) of the removed Protected Tree species of tree removed. For each inch of ~~dbh~~ DBH removed, replacement trees must be provided at the rate shown in Table XX, the following table. For example, for every inch in diameter of a removed group A tree, each inch removed must be replaced with one and one-quarter (1.25) inches in diameter of replacement trees: The mitigation formula for the number of required replacement trees shall be: (DBH of removed tree x coefficient)/(caliper size of replacement trees) = required number 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

Size Class	Public Trees	Group A	Group B	Group C	Group D
<u>2-6"</u>	<u>125%</u>	<u>Encouraged</u>	<u>Encouraged</u>	<u>Encouraged</u>	<u>Encouraged</u>
<u>Greater or equal to 6" but less than 10"</u>	<u>125%</u>	<u>100%</u>	<u>100%</u>	<u>Encouraged</u>	<u>Encouraged</u>
<u>Greater or equal to 10" but less than 20"</u>	<u>150%</u>	<u>125%</u>	<u>125%</u>	<u>100%</u>	<u>Encouraged</u>
<u>Greater or equal to 20" but less than 40"</u>	<u>175%</u>	<u>150%</u>	<u>150%</u>	<u>100%</u>	<u>Encouraged</u>

<u>Greater than 40"</u>	<u>175%</u>	<u>125%</u>	<u>125%</u>	<u>75%</u>	<u>Encouraged</u>
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D. Specifications. All replacement trees must be:

1. Provided by the applicant at the replacement rate specified in Subsection C of this Section;
2. Of a species listed in Ggroup A for public tree replacement or Groups A or B or other high-ecosystem value native trees for private property tree replacement as set forth in the City's Tree Canopy Preservation Policy Appendix A, Subsection 7-8-8-13 of this Section;
3. Between one (1) and two (2) caliper inches ~~At least two and one-half (2½) caliper inches;~~
4. Grown ~~in~~ within the northeastern Illinois region or within a ~~seventy-five~~ two-hundred-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 if planted on public property.

E. Care of replacement trees. The applicant will be solely responsible for the care and management feeding of newly planted trees for a period of three (3) ~~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 I of this Section. The care and management feeding of newly planted trees must, at a minimum, adhere to the tree care standards generally recognized by the International Society of Arboriculture, ANSI, or other nationally recognized tree planting 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 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 (1) 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 fifty dollars (\$150.00)~~ per caliper inch diameter inch using the mitigation formula: (DBH removed tree x coefficient x cost of planting one replacement tree) / (caliper inch of replacement trees) = mitigation fee in lieu of number of replacement trees. The most current tree replacement practices and rates (such as standard caliper inch of replacement trees and cost of planting one replacement tree) shall be publicly available in the City's Tree Canopy Preservation Policy. This mitigation fee represents the value of trees as a resource that provides benefits to the ecosystem and to Evanston as a community. All tree replacement mitigation fees collected by the City will be used to promote the purposes of planting managing and maintaining a healthy urban tree canopy trees in the City, including tree planting and health care.

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 approved filed with all issued tree permits applications for a regulated activity involving the removal replacement of one (1) 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~~ as described in the Tree Canopy Preservation Policy.

~~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 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 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.~~

JK. 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 notify ~~cause notice of the failure to be served upon the applicant and will order the applicant to fully comply~~ seek compliance 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 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 K.3 of this Section, within ~~thirty (30)~~ fourteen (14) 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 an a written notice of appeal with the City Manager or designee. ~~The filing of an appeal will toll the thirty-day period in which the applicant is required to take action pursuant to Subsection 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 or designee will review all ~~reliable and~~ relevant documents and information pertaining to the ~~City Manager or his/her designee's determination~~ appeal. The City Manager or designee must render a written decision on the appeal no later than ~~fourteen (14)~~ thirty (30) days after ~~the City Manager receives the written notice receipt of an~~ appeal. The City Manager or designee 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 or designee will be final. ~~The tolling of the thirty-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-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~~ enter into a contract to perform 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.

SECTION 6: Section 7-8-8-8, "Tree Protection Plan," of the Evanston City

Code of 2012, as amended, is hereby amended as follows:

7-8-8-8. – TREE PROTECTION PLAN.

A. *Plan required.* If a regulated activity includes construction activity within twenty-five (25) feet of any public or private tree, a tree preservation permit will include a protection plan for any impacted public or private trees. Guidelines for these protections will be included in the Tree Canopy Preservation Policy, ~~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 ~~impacted~~ 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 materials or 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 required for 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. 2. Existing and proposed buildings or structures on the lot.
4. 3. Proposed building elevations, if applicable.
5. 4. Proposed work access areas and routes.
6. 5. The name and contact information of the general contractor or project representative, if any, responsible for the proposed construction activity.
7. 6. A demonstration of the ways in which the applicant will ensure that the tree protection required by this Section will be achieved.
8. 7. A diagram of the trees on and around ~~inventory for~~ the subject property, consisting of ~~a list of the following trees, identified by tag number:~~ a) ~~all the existing protected trees~~ Protected Trees on the subject property; b) all ~~trees~~ Protected Trees on adjacent properties that are within twenty-five (25) ten (10) feet of the construction activity 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-; d) all Protected tTrees likely or proposed to be removed or damaged during construction must be labeled; e) trees must be labeled with distances to all existing and proposed infrastructure; f) all other requirements as required by the Tree Canopy Preservation Policy. ~~The tree inventory must list, without limitation, the~~

following data for each tree: Tag number, species, size in DBH 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 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 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. ~~8.~~ Detailed specifications for maintenance and protection of ~~p~~Protected trees and for the maintenance and protection of trees other than ~~p~~Protected ~~t~~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. ~~9.~~ 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.

SECTION 7: Section 7-8-8-9, “Inspections and Surveys,” of the Evanston

City Code of 2012, as amended, is hereby amended as follows:

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.

SECTION 8: Section 7-8-8-10, “Appeals,” of the Evanston City Code of

2012, as amended, is hereby amended as follows:

7-8-8-10. – VARIATIONS AND APPEALS.

A. Applications for variations shall be reviewed and decided in accordance with the following procedure:

1. Public Hearing: Upon receipt of a completed application for a variation, the Human Services Committee shall review at a regularly scheduled public meeting.
2. Public Notices: A sign shall be posted on the property for a minimum of ten (10) working days prior to the public meeting indicating the place, time and date of the meeting.

3. Standards for Granting Variations: Variations may be authorized by the Human Services Committee upon making findings that the proposed variation satisfies the following standards:
 - a. The practical difficulty is not self-created.
 - b. The requested variation will not have a substantial adverse impact on the use, enjoyment or property values of adjoining properties.
 - c. The requested variation is in keeping with the comprehensive general plan and other adopted plans.
 - d. The requested variation is consistent with the preservation policies set forth in the comprehensive general plan.
 - e. The requested variation requires the least deviation from the applicable regulation among the feasible options identified.

2. Human Services Committee Decision: Following the review of the application materials, the Human Services Committee shall either approve, approve with conditions, or deny the application for a variation.

~~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. Appeals 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 or designee will render a recommendation written decision and transmit such decision recommendation to the City Council at their next regularly scheduled meeting. Upon receipt of the recommendation, City Council will review the relevant evidence, documents, or information and may receive and consider new evidence, and make a decision. The decision of the City Council will be final. 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 Section of one hundred (100)~~

~~inches 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. C.~~ 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.

SECTION 9: This ordinance shall be in full force and effect as of 12:00 a.m. June 1, 2024.

SECTION 10: All ordinances or parts of ordinances in conflict herewith are hereby unconditionally repealed in their entirety. The terms and provisions of this Ordinance shall be liberally construed so as to effectuate the purposes set forth in the recitals to this Ordinance. Each and every section in this Ordinance is to be construed and interpreted severally.

SECTION 11: The findings in this Ordinance, and the legislative Record, are declared to be prima facie evidence of the law of the City of Evanston and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 12: If any provision of this Ordinance or application thereof to any person or circumstance is ruled 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 provision or invalid application of this Ordinance is severable.

Introduced: August 28, 2023

Approved:

Adopted: September 11, 2023

September 13, 2023

Daniel Biss
Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza
Stephanie Mendoza, City Clerk

Alexandra B. Ruggie
Alexandra B. Ruggie, Interim Corporation Counsel