

ORDINANCE NO. ____

AN ORDINANCE TO PROVIDE FOR THE PROTECTION, MANAGEMENT, REMOVAL, AND REPLACEMENT OF TREES ON PUBLIC PROPERTY AND PUBLIC RIGHT OF WAYS WITHIN THE VILLAGE OF THREE OAKS AND TO PROVIDE PENALTIES FOR THE VIOLATION.

THE VILLAGE OF THREE OAKS ORDAINS:

Section 1. **TITLE.**

This ordinance shall be known as the municipal tree and shrub ordinance for the Village of Three Oaks, Berrien County, State of Michigan.

Section 2. **PURPOSE; INTENT.**

The purpose of this ordinance is to provide for the protection, management, removal, and replacement of trees on public property and public right of ways. Proper planning and care will help insure that these assets will continue to thrive and benefit the citizens of the Village in the future.

Section 3. **APPLICABILITY; JURISDICTION.**

The Village Manager, or designee, shall have exclusive jurisdiction, authority, control, supervision and direction over all trees, plants, shrubs, and grassy areas planted or growing in or upon the public right of ways and public places of the Village and the planting, removal, care, maintenance and protection thereof, and he or she may promulgate and adopt rules and regulations to effectuate the provisions of this ordinance.

Section 4. **DEFINITIONS.**

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Canopy. The part of the crown composed of leaves and small twigs.

Diseased Tree. Any tree with a combination of structural defect and/or a health condition which makes it subject to a high probability of failure.

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

Line Clearance. The regulated trimming and the removal of trees near, under and along utility lines to maintain reliable distribution of electricity.

Municipal Forester or Designee. Someone who possesses general knowledge of specific trees and a broader knowledge base on the overall roles trees play in the community setting.

Park. All public parks having individual names, and all areas owned by the Village, or to which the public has free access.

Park Tree. Trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the Village, or to which the public has free access as a park.

Public Place. Any public street, public highway, public park or any property owned or held by the Village within its boundaries.

Public Right of Way (ROW). Land owned and maintained by the Village. Land dedicated for streets sidewalks, utilities, and similar public uses such as parks, lawn extensions and the like.

Public Tree. Any tree located on property owned or controlled by the Village.

Shrub. A low, small plant, the branches of which grow directly from the earth without any supporting trunk, or stem. Any tree with a potential growth of less than 15 feet shall be considered a shrub.

Street Tree. Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Village.

Tree. A woody perennial plant, usually having one dominant vertical trunk and capable of achieving a height greater than 15 feet.

Tree Advocacy Group. A group of people designated by ordinance to advise a governing body on matters related to an urban and community forestry program.

Utility Right of Way. Public right of way land where utilities such as gas, electric, water, and the like are maintained.

Section 5. **PERSON OR DEPARTMENT RESPONSIBLE FOR TREES.**

The Village Manager, or designee, as municipal forester, shall have authority over any and all trees on public right-of-ways or any public property in the Village of Three Oaks.

Section 6. **TREE ADVOCACY GROUP.**

(A) *Creation and establishment.* The Village Council has the authority to create a tree advocacy group for the Village of Three Oaks on an as needed basis. The tree advocacy group shall consist of five (5) members, citizens and residents of the Village, who shall be appointed by the Village President with the approval of the Council. The members shall come from different interest groups including homeowners, tree professionals, street department, and municipal government.

(B) *Terms of office.* The term of the five (5) persons to be appointed by the Village President shall be set by Council. In the event that a vacancy shall occur during the term of any member, his/her successor shall be appointed for the unexpired portion of the term.

(C) *Compensation.* Members of tree advocacy group shall serve without compensation.

(D) *Duties and responsibilities.*

(1) It shall be the responsibility of the tree advocacy group to advise and assist in the study, investigation, counsel, development and administration of a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets, and in other municipal areas. Such plan could be presented annually to the Village Council for possible acceptance and approval to constitute the official comprehensive community tree plan if so desired by the Village Manager, or designee.

(2) The tree advocacy group shall promote and supervise the establishment of a tree inventory for street and park trees. The inventory shall be updated with the results of ground inspections every three (3) years.

(3) The tree advocacy group, when requested by the Village Council, shall consider, investigate, make finding, report and recommend upon any special matter or question coming within the scope of its work.

(4) If called on to do so, additional duties of the tree advocacy group may include coordinating annual Arbor Day celebrations; coordinating tree plantings, volunteer efforts to install or maintain plantings or other beautification projects on public land with citizens groups; provide a means to involve the public in community forestry management plan; and promote new and existing tree programs by motivating both local government and the public to support community forestry management.

(E) *Operation.* The tree advocacy group shall choose its own officers, and keep a record of its proceedings.

(F) *Meetings.* The tree advocacy group shall meet as needed, and in addition, meetings can be called by the chairperson or by the Village President.

(G) *Quorum.* A majority of the members shall constitute a quorum for the transaction of business and any actions of the tree advocacy group may be taken by a majority of the members present at the meeting at which the action is taken

(H) *Administrative support staff.* Staff support to the tree advocacy group shall be appointed by the Municipal Administrator, or designee.

Section 7. **AUTHORITY TO ENFORCE.**

The Department of Public Works, under the direction of the Village Manager, or designee, shall be responsible for enforcing the provisions of this ordinance. The Director of Public Works, or designee, shall have the authority to perform site inspections and order the correction of unsafe trees on public and private property that are a potential danger to the health and safety of public or municipal property.

Section 8. **AUTHORITY TO ACCEPT MONIES.**

The Clerk and Treasurer, or either of them, are hereby authorized to accept, on behalf of the Village, all gifts of money for the purpose of planting and maintaining trees.

Section 9. **PERMITS.**

(A) No person shall plant, spray, prune, remove, cut above or below ground, or otherwise disturb any tree on any street or municipal-owned property without first filing an application and procuring a permit from the Village Manager, or designee, or otherwise specified municipal authority. The person receiving the permit shall abide by the arboricultural specifications and standards of practice adopted by

the Village Manager, or designee. No permit, however, shall be required for any municipal employee doing such work in the pursuit of their public service endeavors. No permit shall be required to cultivate or water public trees, shrubs or plants.

(B) The Village Manager, or designee, shall have the authority to require posting of a bond adequate to fully repay the Village of Three Oaks for any and all costs attendant to the completion of the work under the permit. In addition, the contractor is required to show adequate insurance from potential damages during the execution of the work, name the Village of Three Oaks as an additional insurance rider, and sign a hold harmless clause.

Section 10. **STANDARDS AND SPECIFICATIONS MANUAL.**

The Tree Standards and Specifications Manual that accompanies this Ordinance shall contain regulations and standards for planting, maintenance, and removal of trees, shrubs and other plants on municipally owned property.

Section 11. **TREE PROTECTION; PRESERVATION.**

(A) *Prohibiting the mutilation of public trees.* It shall be a violation of the provisions of this Ordinance for any person to abuse, destroy or mutilate any tree, plant or shrub in a public parking strip or any other public place, or to attach or place any rope, wire (other than one used to support a young or broken tree), sign, poster, handbill, or other things to or on any tree growing in a public place, or to cause or permit any wire charged with electricity to be placed or attached to any such tree, or allow any gaseous, liquid, or solid substance which is harmful to such tree to come in contact with their roots, trunks, or leaves.

(B) *Requiring protection of trees during construction, new developments, sidewalk repair, utility work below ground.* Trees of desirable species and good health shall be protected as much as possible from damage during construction, sidewalk repair, utilities work below ground, and other similar

activities. The zone of protection shall include the ground beneath the canopy and the drip-line of the tree. In new subdivisions or when the new development of commercial property occurs, the Village Manager, or designee, shall review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks, and other public places abutting lands henceforth developed and/or subdivided.

(C) *Requiring protection of trees during utility work above ground.* Utility companies are responsible for conducting a courtesy call to the municipal administrator, or designee, to review all upcoming utility line clearance work to be performed within the following 4 to 6 weeks. All utility line clearance work will be performed based upon growth rates specific to individual tree species and in accordance to the International Society of Arboriculture's Proper Pruning Techniques publication, found in Appendix C of the Standards and Specifications Manual accompanying this Ordinance.

(D) *Establishing standards to replace trees removed and protect endangered trees.* Whenever any vegetation is removed by any person, including the Village, for the construction of any public improvement, the Director of Public Works, whenever practicable, shall require the replanting of at least 50% of the removed diameter base with a similar tree or shrub to take the place of those removed.

Section 12. **OBSTRUCTION.**

If private property, a lawn extension or municipal right of way is not maintained as required by this ordinance, the Municipal Administrator, or designee, may have the work done to bring the property lawn extension or municipal right-of-way into compliance. In the case of an immediate hazard to public safety no prior notice shall be necessary. The actual costs of the work needed to bring the property, lawn extension or municipal right-of-way into compliance, plus an administration fee of \$50.00, may be assessed to the owner in addition to any other penalties provided by law.

Section 13. **NUISANCE AND CONDEMNATION OF TREES ON PUBLIC AND PRIVATE PROPERTY.**

(A) *Generally.* All street trees planted in violation of, or not maintained in strict compliance with the provisions of this ordinance and the Standards and Specifications Manual, or that are dead or dangerous are declared to constitute a public nuisance. The Village Manager, or designee, shall cause written notice to be served on the property owner requiring such nuisances to be corrected within thirty (30) days or the cost of correction will be assessed against the property owner.

(B) *Dead or diseased tree removal on private property.* Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the Village Manager, or designee, shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove, or otherwise control such condition within reasonable time to be specified in such notice.

Section 14. **APPEALS.**

Any person deciding to appeal a decision made by the Village Manager, or designee, shall be granted a meeting with the person or department responsible trees to discuss the issue. The person or department responsible for trees must be notified of the desire to meet within fourteen (14) days from when the decision was publicized. If a discussion satisfying both parties cannot be met, a written appeal may be submitted to the Village Council within fourteen (14) days thereafter. The decision of the Village Council shall be final.

Section 15. **INTERFERENCE.**

No person shall prevent, delay, or interfere with the Village Manager or designee, in the execution or enforcement of the ordinance.

Section 16. **EMERGENCIES.**

In case of emergencies involving, but not limited to, tornadoes, windstorms, floods, freezes, or other natural disasters, the requirements of this ordinance may be waived by the Village President or emergency manager. This section shall not be used to circumvent the tree ordinance.

Section 17. **SANCTIONS**

Any person who violates any of the provisions of this Ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than Fifty (\$50.00) Dollars or more than Five Hundred (\$500.00) Dollars, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:

- (1) The fine for any offense which is a first repeat offense shall be not less than Two Hundred Fifty (\$250.00) Dollars, plus costs and other sanctions.
- (2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall not be less than Five Hundred (\$500.00) Dollars, plus costs and other sanctions.

A repeat offense means a second (or any subsequent) violation of this Ordinance (i) committed by a person within any six (6) month period and (ii) for which the person admits responsibility or is determined to be responsible.

Each day on which any violation of this Ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

In addition, the Village specifically reserves the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with this ordinance.

Section 18. **PUBLICATION.**

This ordinance shall be either published once, in full, in the South County Gazette, or another newspaper of general circulation within the boundaries of the Village of Three Oaks, within fifteen (15) days after its adoption and the same shall be recorded in the Ordinance Book of the Village and such recording authenticated by the signature of the President and the Village Clerk.

Section 19. **ADOPTION.**

This ordinance was adopted by the Village Council of the Village of Three Oaks at a regular meeting held in the Village Hall on the _____ day of _____, 2013, and ordered effective on the ____ day of _____, 2013, the same being the date of publication.

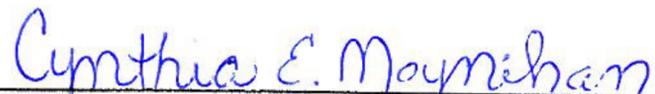
Cynthia E. Moynihan, Clerk
Village of Three Oaks

Attest:

David Grosse, President
Village of Three Oaks

Section 19. **ADOPTION.**

This ordinance was adopted by the Village Council of the Village of Three Oaks at a regular meeting held in the Village Hall on the 10th day of July, 2013, and ordered effective on the 1st day of August, 2013, the same being more than twenty (20) days after its passage..



Cynthia E. Moynihan, Clerk
Village of Three Oaks

Attest:



David Grosse, President
Village of Three Oaks