

## Chapter 37 WOODLANDS PROTECTION\*

**\*Editor's note:** Ord. No. 09-125.21, Pt. I, adopted Mar. 9, 2009, repealed the former Ch. 37, Art. I, §§ 37-1--37-6.5, §§ 37-7--37-10, Art. II, §§ 37-26--37-33, Art. III, §§ 37-41--37-45 and enacted a new Ch. 37 as set out herein. The former Ch. 37 pertained to woodlands protection and derived from Ord. No. 86-125.02, §§ 4.02, 4.03, §§ 2.01--8.01, § 9.01(1)--(7), §§ 10.01--16.01, 12-15-86; Ord. No. 87-125.03, Pt. I, 6-1-87; Ord. No. 88-125.04, Pt. I, Pts. II--VI, Pts. VIII, IX, Pts. XI--XVI, 8-8-88; Ord. No. 92-125.06, Pt. II, 1-13-92; Ord. No. 93-125.07, Pts. III--XI, 2-1-93; Ord. No. 94-125.08, Pt. I, 3-7-94; Ord. No. 95-125.09, Pt. I, 9-11-95; Ord. No. 96-125.10, Pt. I, 4-22-96; Ord. No. 97-160, Pt. XXV, 4-7-97; Ord. No. 98-125.11, Pts. I--VI, 2-9-98; Ord. No. 2000-125.13, Pts. I--V, 2-28-00; Ord. No. 03-125.14, § 1, 4-7-03; Ord. No. 03-125.15, Pt. I, 5-5-03; Ord. No. 2003-125.16, Pts. I, II, 10-20-03; Ord. No. 03-172, Pt. XIV, 10-20-03; Ord. No. 04-125.17, Pt. I, 5-3-04; Ord. No. 04-125.18, §§ 1--3, 7-26-04; Ord. No. 04-125.19, §§ 1, 2, 9-13-04; Ord. No. 06-125.20, § 1, 10-9-06.

**Cross references:** Performance guarantees, ch. 26.5; planning, Ch. 27.

Art. I. In General, §§ 37-1--37-25

Art. II. Permit, §§ 37-26--37-40

Art. III. Dead, Damaged, or Dangerous Trees on Private Property, §§ 37-41--37-45

### ARTICLE I. IN GENERAL

#### Sec. 37-1. Findings, purpose.

(a) The city finds that rapid growth, the spread of development, and increasing demands upon natural resources have had the effect of encroaching upon, despoiling, or eliminating many of the trees and other forms of vegetation and natural resources and processes associated therewith which if preserved and maintained in an undisturbed and natural condition, constitute important physical, aesthetic, recreation and economic assets to existing and future residents of the city. Specifically, the city finds that:

(1) Woodland growth protects public health through the absorption of air pollutants and contamination, through buffering in the reduction of excessive noise, wind, storms and visual screening, and through its cooling effect in the summer months;

(2) Woodlands provide for public safety through the prevention of erosion, siltation, and flooding;

(3) Trees and woodland growth are an essential component of the general welfare of the city by maintaining natural beauty, recreation, and an irreplaceable heritage for existing and future city residents; and

(4) The protection of such natural resources is a matter of paramount public concern, as provided by Article IV, Section 52 of the Constitution of 1963, and the Natural Resources and Environmental Protection Act of 1994, Act No. 451 of the Public Acts of Michigan of 1994 (MCL 324.101 et seq.), as amended.

(b) Therefore, the purposes of this chapter are to:

(1) Provide for the protection, preservation, replacement, proper maintenance and use of trees and woodlands located in the city in order to minimize disturbance to them and

to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or from the destruction of the natural habitat. In this regard, it is the intent of this chapter to protect the integrity of woodland areas as a whole, in recognition that woodlands serve as part of an ecosystem, and to place priority on the preservation of woodlands, trees, similar woody vegetation, and related natural resources over development when there are no location alternatives;

(2) Protect the woodlands, including trees and other forms of vegetation, of the city for their economic support of local property values when allowed to remain uncleared and/or unharvested and for their natural beauty, wilderness character of geological, ecological, or historical significance; and

(3) Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of the city.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-2. Definitions.**

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

*Agricultural activity* means the production of plants and animals useful to humans, including forages and sod crops, feed crops, field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural activity includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural activity does not include the management and harvesting of a woodlot.

*American National Standards Institute* means the most current version of A300, the industry consensus of performance standards for the care, pruning, and protection of trees.

*Arborist* means an individual who is either a certified arborist by the International Society of Arboriculture (ISA) or has more than five (5) years of demonstrated professional experience as an arborist and who performs all work to ANSI A300 standards.

*Bona fide farming* means the undertaking of good faith agricultural activity on land. In determining whether the activity occurring on land is bona fide, the following criteria shall be considered:

(1) The length of time the land has been so utilized;

(2) Whether the use has been continuous;

(3) The size of the operation, as it relates to and as appropriate for the specific alleged agricultural activity;

(4) Whether apparent effort has been made to care sufficiently and adequately for the land in accordance with generally accepted agricultural and management practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, etc.;

(5) Whether the land is under lease for the conduct of the activity and, if so, the length, terms, and conditions of the lease; and

(6) The agricultural activity must be a permitted (or approved conditional) or accessory use as set forth in the zoning ordinance.

*Commercial farming* means a farming operation designed to generate income to the owner, reported for tax purposes on an annual basis, from the agricultural.

*Building area* means a designated outline of an area of permitted woodland encroachment for construction of a single-family residence. The building area shall

include sufficient area for a residence, plus fifteen (15) feet around the residence for construction purposes. Building areas shall be located by depicting perpendicular distances to corresponding front, side and rear lot lines. In addition, perpendicular distances to regulated woodland boundaries from the corners of such buildings areas shall be depicted.

*Commercial nursery, tree farm* means a licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and growing for sale or intended sale to the general public in the ordinary course of the licensee's business.

*Critical root zone (CRZ)* means a circular area around a tree with a radius measured to the tree's longest dripline radius plus one (1) foot.

*Damaged tree* means a tree that is injured so that it is not a viable tree or may cause harm. Any tree with greater than seventy-five (75) percent of its canopy intact shall be considered viable and healthy. This determination shall be made during the regular growing season.

*Dead tree* means a tree having no more than zero (0) to fifteen (15) percent of the canopy with leaves. This determination shall be made during the regular growing season.

*Development* includes any lawful land use authorized under appendix A, "Zoning Ordinance," as amended.

*Diameter breast height (d.b.h.)* means the diameter in inches of a tree measured at four and one-half (4 1/2) feet above the existing grade.

*Diseased tree* means a tree that has been determined to have a terminal disease such as, but not limited to, Dutch Elm disease or Oak Wilt. Said disease must be confirmed by the Michigan State Cooperative Extension Service Plant and Pest Diagnostic Clinic at Michigan State University or an equivalent laboratory.

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

*Farm* means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

*Farm operation* means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- (1) Marketing produce at roadside stands or farm markets.
- (2) The generation of noise, odors, dust, fumes, and other associated conditions.
- (3) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- (4) Field preparation and ground and aerial seeding and spraying.
- (5) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- (6) Use of alternative pest management techniques.
- (7) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- (8) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.

(9) The conversion from a farm operation activity to other farm operation activities.

(10) The employment and use of labor.

*Farm product* means those plants and animals useful to human beings produced by agricultural activity and includes, but it is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber or, fir, as determined by the Michigan Commission of Agriculture.

*Groundcover* means low-growing shrubs, woody vegetation, wild flowers and other small herbaceous plants within a woodland area.

*Grubbing* means the effective removal of understory vegetation, groundcover, shrubs or trees. In those instances when grubbing is permitted it shall not include the removal of any trees with a d.b.h. of greater than three (3) inches.

*Historic tree* means a tree which, has been nominated to and designated by the planning commission to be of notable historic interest to the city because of its notable historic association.

*ISA* means the International Society of Arboriculture.

*Land clearing* means those operations where trees and vegetation are removed and which occur previous to construction of a building; e.g., road right-of-way excavation and paving, lake and drainage system excavation, utility excavation, grubbing, and any other necessary clearing operations.

*Locate* means construct, place, insert or excavate.

*Material* includes soil, sand, gravel, clay, peat, mud, debris and refuse, or any other material organic or inorganic.

*"No tree" verification* means a signed, notarized statement by the owner or agent stating that no trees exist upon the site of eight-inch d.b.h. or greater.

*Nonhuman cause* means a natural result proceeding from physical causes done without the intervention of humans, such as, insect infestation, diseases or acts of God (an act occasioned exclusively by violence of nature without the interference of any human agency).

*Operations* includes the locating, moving or depositing of any material, or any construction use or activity, or a combination thereof which in any way modifies the conditions of lands subject to this chapter.

*Owner* means any person who has dominion over, control of, or title to woodland.

*Person* includes any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the city and all tree removal companies and persons removing trees on behalf of others.

*Planning commission* means the planning commission organized under article II of chapter 27.

*Protective barrier* means a physical structure limiting access to a protected area, composed of wood or other suitable materials which ensures compliance with the intent of this chapter. Variations of these methods may be permitted upon written request if they satisfy the intent of this chapter.

*Regulated woodland* means those areas within the City of Novi depicted on the regulated woodland map, as adopted by the city council, as demonstrating a level of mature, historic and/or environmentally significant vegetation. A site with any level of regulated woodland must be field verified and documented in order to fully determine the

vegetation that is referenced in this chapter. Vegetation identified as regulated woodland includes large trees, understory trees, large and small shrubs and groundcover.

*Remove, removal* includes the cutting of trees and the injury and/or destruction of any form of vegetation, by whatever method, on any lands subject to this chapter.

*Specimen tree* means a tree which, pursuant to section 37-6.5, has been designated as a specimen tree by the planning commission because of its high value as a representative tree of a particular type or species, due to its size, age or other prominent characteristic.

*Structure* means any assembly of materials above or below the surface of the land or water, including but not limited to houses, buildings, bulkheads, piers, docks, landings, dams, waterway obstructions, towers, utility transmission devices.

*Transplant* means the digging up by a property owner of a tree from one place on a property and the planting of the same tree in another place on the same property.

*Tree* means a woody plant with an erect perennial trunk, which at maturity is thirteen (13) feet or more in height and which has a more or less definite crown of foliage.

*Woodland areas* means all lands (including all trees, shrubs and ground cover thereon regardless of size) which are subject to this chapter under section 37-4 as designated on the regulated woodland map and/or on an approved site plan. Woodlands areas are identified by such factors as: soil quality, habitat quality, tree species and diversity, health and vigor of tree stand, understory species and quality, presence of wildlife, and other factors such as the value of the woodland area as a scenic asset, windblock, noise buffer, healthy environment, and the value of historic or specimen trees.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-3. Interpretation and application.**

In the interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience, or general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to activities within woodland areas; provided, however, that where this chapter imposes a greater restriction than is required by existing ordinances or by rules, regulations or permits the provisions of this chapter shall control.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-4. Applicability.**

(a) This chapter shall apply to all lands depicted on the regulated woodland map.

(b) This chapter shall further apply for the protection of any individual tree with a d.b.h. of thirty-six (36) inches or greater, irrespective of whether such tree is within a regulated woodland. A woodland use permit shall be required under section 37-26 before the conduct of any activity which has the effect of removing, damaging or destroying a tree with a d.b.h. of thirty-six (36) inches or greater.

(c) Where uncertainty exists with respect to the boundaries of designated woodland areas shown on the regulated woodland map, the following rules shall apply:

(1) Distances not specifically indicated on the map shall be determined by the scale on the map;

(2) Where physical or natural features existing on the ground are at variance with those shown on the regulated woodland map, or in other circumstances where uncertainty exists, the community development director or his or her designee shall interpret the woodland area boundaries;

(3) On any parcel containing any degree of regulated woodland, the applicant shall provide site plan documentation showing the locations, species, size and condition of all trees of eight-inch caliper or larger. Existing site understory trees, shrubs and ground cover conditions must be documented on the site plan or woodland use permit application plan in the form of a brief narrative. The woodland conditions narrative should include information regarding plant species, general quantities and condition of the woodland vegetation.

(d) Where there is uncertainty as to whether this chapter requires a woodland use permit for proposed activities on a given parcel of land, the owner or developer may provide the city with an affidavit, in form approved by the city, indicating that this chapter does not apply to the parcel. Upon verification by the city, the owner or developer shall be relieved of the necessity of submitting a woodland use permit application.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-5. Enforcement.**

(a) Any person, firm or corporation determined to have been in violation of the provisions of this article shall be responsible for a municipal civil infraction and subject to the provisions of section 1-11 of this Code.

(b) In addition to the penalties provided for in section 1-11, any person who violates any provision of this chapter shall forfeit and pay to the city a civil penalty equal to the total value of those trees illegally removed or damaged, as computed from the International Society of Arboriculture shade tree value formula. Such sum shall accrue to the city and may be recovered in a civil action brought by the city. Such sum so collected shall be placed in the city tree fund. Replacement of illegally removed trees may be required as restoration in lieu of money. This replacement will be computed on an inch-for-inch ratio based on the total diameter measured at d.b.h. of the illegally removed trees. If, because of destruction of the removed trees, exact inch-for-inch measurements cannot be obtained, the city may use other means to estimate the tree loss. A combination of tree replacement funds and tree replacement may be required.

(c) Any use or activity in violation of the terms of this chapter is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The council, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator.

(d) If activities are conducted in a regulated woodland area contrary to the use permit required by this chapter or other applicable laws or ordinances, the community development department shall give written notice to the permit grantee, or if a permit has not been issued then to the person conducting the activity, notifying him of the violation of the permit, this chapter, or other applicable law or ordinance, and to appear and show cause why the activity should not be stopped. If the permit grantee or the person conducting the activity fails to appear and show good cause within one (1) full workday after notice is delivered, the community development department shall cause a written order to stop the activity to be posted on the premises. A person shall not continue, or cause or allow to be continued, activity in violation of such an order, except with permission of the enforcing agency to abate a dangerous condition or remove the violation, or except by court order. If an order to stop is not obeyed, the enforcing agency may apply to the circuit court for the county in joining the violation of the order. This

remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, including the issuance of a municipal civil infraction for the failure to obey the order.

(e) Any person violating the provisions of this chapter shall become liable to the city for any expense or loss or damage occasioned by the city by reason of such violation.  
(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-6. Regulated woodland map.**

(a) The regulated woodland areas are hereby established as shown on the regulated woodland map which is on file in the office of the city clerk and which with all notations, references, and the information shown thereon, shall be as much a part of this chapter as if fully described in this section. If because of problems with scale or detail there is any ambiguity as to whether a particular area is a part of a regulated woodland, or if the applicant presents evidence that the woodland area has been designated as regulated in error, that determination shall be made by the body or official reviewing the proposed use or activity or by the community development director or his or her designee. Appeal to the decision under this section shall be governed by section 37-31.

(b) The council may revise the official regulated woodland map at any time that new and substantial data for woodlands is available. Community development staff may update the map for accuracy when minor alterations are field verified. Where the regulated woodland map is amended to add an individual property or several adjacent properties as regulated woodland, notice of the proposed amendment and hearing shall be given to all owners of such property at least fifteen (15) days before the hearing.  
(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-6.5. Historic and specimen trees.**

(a) A person may nominate a tree within the city for designation as a historic or specimen tree based upon documented historical or cultural associations. Such a nomination shall be made upon that form provided by the community development department. A person may nominate a tree within the city as a specimen tree based upon its size and good health. Any species may be nominated as a specimen tree for consideration by the planning commission. Typical tree species by caliper size that are eligible for nomination as specimen trees must meet the minimum size qualifications as shown below.

Specimen Trees Minimum Caliper Size

TABLE INSET:

Common Name	Species	DBH
Arborvitae	Thuja Occidentalis	16"
Ash	Fraxinus spp.	24"
American basswood	Tilia americana	24"
American beech	Fagus grandifolia	24"
American elm	Ulmus americana	24"
Birch	Betula spp.	18"
Black alder	Alnus glutinosa	12"

<b>Black tupelo</b>	<b>Nyssa sylvatica</b>	<b>12"</b>
<b>Black walnut</b>	<b>Juglans nigra</b>	<b>24"</b>
<b>White walnut</b>	<b>Juglans cinerea</b>	<b>20"</b>
<b>Buckeye</b>	<b>Aesculus spp.</b>	<b>18"</b>
<b>Cedar, red</b>	<b>Juniperus spp.</b>	<b>14"</b>
<b>Crabapple</b>	<b>Malus spp.</b>	<b>12"</b>
<b>Douglas fir</b>	<b>Pseudotsuga menziesii</b>	<b>18"</b>
<b>Eastern hemlock</b>	<b>Tsuga canadensis</b>	<b>14"</b>
<b>Flowering dogwood</b>	<b>Cornus florida</b>	<b>10"</b>
<b>Ginkgo</b>	<b>Ginkgo biloba</b>	<b>24"</b>
<b>Hickory</b>	<b>Carya, spp.</b>	<b>24"</b>
<b>Kentucky coffee tree</b>	<b>Gymnocladus dioicus</b>	<b>24"</b>
<b>Larch/tamarack</b>	<b>Larix laricina (Eastern)</b>	<b>14"</b>
<b>Locust</b>	<b>Gleditsia triacanthos / Robinia pseudocacia</b>	<b>24"</b>
<b>Sycamore</b>	<b>Platanus spp.</b>	<b>24"</b>
<b>Maple</b>	<b>Acer spp. (except negundo)</b>	<b>24"</b>
<b>Oak</b>	<b>Quercus spp.</b>	<b>24"</b>
<b>Pine</b>	<b>Pinus spp.</b>	<b>24"</b>
<b>Sassafras</b>	<b>Sassafras albidum</b>	<b>16"</b>
<b>Spruce</b>	<b>Picea spp.</b>	<b>24"</b>
<b>Tulip tree</b>	<b>Liriodendron tulipifera</b>	<b>24"</b>
<b>Wild cherry</b>	<b>Prunus spp.</b>	<b>24"</b>

(b) A nomination for designation of a historic or specimen tree shall be brought on for consideration by the planning commission. Where the nomination is not made by the owner of the property where the tree is located, the owner shall be notified in writing at least fifteen (15) days in advance of the time, date and place that the planning commission will consider the designation. The notice shall advise the owner that the designation of the tree as a historic or specimen tree will make it unlawful to remove, damage or destroy the tree absent the granting of a woodland use permit by the city. The notice shall further advise the owner that if he objects to the tree designation the planning commission shall refuse to so designate the tree.

(c) Absent objection by the owner, the planning commission may designate a tree as an historic tree upon a finding that because of one (1) or more of the following unique characteristics the tree should be preserved as a historic tree:

(1) The tree is associated with a notable person or historic figure;



- (2) The tree is associated with the history or development of the nation, the state or the city;
  - (3) The tree is associated with an eminent educator or education institution;
  - (4) The tree is associated with art, literature, law, music, science or cultural life;
  - (5) The tree is associated with early forestry or conservation;
  - (6) The tree is associated with American Indian history, legend or lore.
- (d) Absent objection by the owner, the planning commission may designate a tree as a specimen tree upon a finding that because of one (1) or more of the following unique characteristics the tree should be preserved as a specimen tree:
- (1) The tree is the predominant tree within a distinct scenic or aesthetically-valued setting;
  - (2) The tree is of unusual age or size. Examples include those trees listed on the American Association Social Register of Big Trees, or by the Michigan Botanical Club as a Michigan Big Tree, or by nature of meeting the minimum size standards for the species as shown in the "Specimen Trees Minimum Caliper Size" chart, above;
  - (3) The tree has gained prominence due to unusual form or botanical characteristics.
- (e) Any tree designated by the planning commission as an historical or specimen tree shall be so depicted on an historic and specimen tree map to be maintained by the community development department.
- (f) The removal of any designated specimen or historic tree will require prior approval by the planning commission. Replacement of the removed tree on an inch for inch basis may be required as part of the approval.
- (Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-7. Property inspection.**

The city, its officials, agents and employees may make reasonable entry upon any lands or waters within the city for the purpose of enforcement of this chapter or the conduct of any investigation, survey or study contemplated by this chapter.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-8. Relocation or replacement of trees.**

(a) Whenever an approved site plan or woodland use permit allows the removal of trees eight-inch d.b.h. or greater, such trees shall be relocated or replaced by the permit grantee. Such woodland replanting shall not qualify toward the landscaping requirements of the subdivision ordinance or the zoning landscaping, section 2509. All replacement trees shall be two and one-half (2 1/2) inches caliper or greater. Tree replacement shall be at the following ratio:

Replacement Tree Requirements

TABLE INSET:

Removed Tree d.b.h. (In Inches)	Ratio Replacement/ Removed Trees
8 < 11	1
> 11 < 20	2
> 20 < 29	3
> 30	4

(b) All replacement trees shall satisfy American Association of Nurseryman standards, and be:

- (1) Nursery grown;
- (2) State department of agriculture inspected;
- (3) Tree spade transplanted while in the dormant state or, if not in the dormant state, having been balled and burlapped with a solid well-laced root ball when in the dormant state;
- (4) No. 1 grade, with a straight unscarred trunk and a well-developed uniform crown (park grade trees are unacceptable);
- (5) Staked, watered and mulched in accordance with section 2509 of appendix A, planted in accordance with the city tree planting details, and approved through inspection by the city landscape architect or designee.
- (6) Guaranteed for two (2) years, including labor to remove and dispose of dead material;
- (7) Planted in accordance with the citytree planting detail, and approved through inspection by the city.
- (8) Michigan native species or as listed in the replacement chart below. The city can deny the use of certain trees based upon disease or insect susceptibility or the growing conditions on the site. Further, the city can determine the number of different tree species in a planting as a diversity of tree species is strongly encouraged.
- (9) Planted with a minimum clearance of ten (10) feet from all built utility structures and outside of any and all easements whenever possible.

Woodland Tree Replacement Chart

TABLE INSET:

Common Name	Botanical Name
<b>Red Pine</b>	<b><i>Pinus resinosa</i></b>
<b>Paper Birch</b>	<b><i>Betula papyrifera</i></b>
<b>Yellow Birch</b>	<b><i>Betula alleghaniensis</i></b>
<b>Downy Serviceberry</b>	<b><i>Amelanchier arborea</i></b>
<b>Eastern Redbud</b>	<b><i>Cercis canadensis</i></b>
<b>Northern Hackberry</b>	<b><i>Celtis occidentalis</i></b>
<b>American Bladdernut</b>	<b><i>Staphylea trifolia</i></b>
<b>Kentucky Coffeetree</b>	<b><i>Gymnocladus dioica</i></b>
<b>Ohio Buckeye</b>	<b><i>Aesculus glabra</i></b>
<b>Black Cherry</b>	<b><i>Prunus serotina</i></b>
<b>Black Maple</b>	<b><i>Acer nigrum</i></b>
<b>Striped Maple</b>	<b><i>Acer Pennsylvanicum</i></b>
<b>Mountain Maple</b>	<b><i>Acer spicatum</i></b>
<b>Beech</b>	<b><i>Fagus</i></b>

<b>Sugar Maple</b>	<b>Acer saccharum</b>
<b>Swamp White Oak</b>	<b>Quercus bicolor</b>
<b>Shingle Oak</b>	<b>Quercus imbricaria</b>
<b>Scarlet Oak</b>	<b>Quercus coccinea</b>
<b>Chinkapin Oak</b>	<b>Quercus muehlenbergii</b>
<b>Red Oak</b>	<b>Quercus rubra</b>
<b>White Oak</b>	<b>Quercus alba</b>
<b>Burr Oak</b>	<b>Quercus macrocarpa</b>
<b>Black Oak</b>	<b>Quercus velutina</b>
<b>Walnut</b>	<b>Juglans</b>
<b>Shagbark Hickory</b>	<b>Carya ovata</b>
<b>Pignut Hickory</b>	<b>Carya glabra</b>
<b>Bitternut Hickory</b>	<b>Carya cordiformis</b>
<b>Sweetgum</b>	<b>Liquidambar styraciflua</b>
<b>White Pine _ (1.5:1 ratio) (6' ht.)</b>	<b>Pinus strobus</b>
<b>Hemlock _ (1.5:1 ratio) (6' ht.)</b>	<b>Tsuga canadensis</b>
<b>White Spruce _ (1.5:1 ratio) (6' ht.)</b>	<b>Picea glauca</b>
<b>Black Spruce _ (1.5:1 ratio) (6' ht.)</b>	<b>Picea mariana</b>
<b>Bald Cypress</b>	<b>Taxodium distichum</b>
<b>Yellowwood</b>	<b>Cladrastis lutea</b>
<b>Red Maple</b>	<b>Acer rubrum</b>
<b>American Basswood</b>	<b>Tilia americana</b>
<b>American Sycamore</b>	<b>Platanus occidentalis</b>
<b>Tupelo</b>	<b>Nyssa sylvatica</b>
<b>Tuliptree</b>	<b>Liriodendron tulipifera</b>
<b>Thornless Honeylocust</b>	<b>Gleditsia triacanthos inermis</b>
<b>American Hornbeam</b>	<b>Carpinus caroliniana</b>
<b>American Hophornbeam</b>	<b>Ostrya virginiana</b>
<b>Eastern Larch</b>	<b>Larix laricina</b>

(c) The planning commission may approve the planting of a variety of native woodland plants toward required woodland replacements credits. The combined total of plant credits must meet or exceed the total DBH normally required for standard 2.5-inch

caliper woodland tree replacement. Reforestation plants will receive credit as depicted in the reforestation credit table below. For example, two (2) 1.5-inch caliper hickory trees could be planted and credited as one (1) replacement for a removed eight-inch regulated woodland tree. In order to assure a variety of plant types, the maximum allowable percentage of replacement credits for any plant type are as listed below. Site plans including proposed reforestation credits should include a chart such as above documenting the percentages of vegetation types utilized.

Reforestation Credit Table

TABLE INSET:

Type	Minimum Size	DBH Credit Proposed Plant: Required Replacement.	Max. Use Percentage
<b>Canopy Trees</b>	<b>1.5" Caliper</b>	<b>2:1</b>	<b>70%</b>
<b>Evergreen trees</b>	<b>36" Height</b>	<b>3:1</b>	<b>30%</b>
<b>Understory trees</b>	<b>1" Caliper</b>	<b>5:1</b>	<b>30%</b>
<b>Large shrubs</b>	<b>30" Height</b>	<b>6:1</b>	<b>30%</b>
<b>Small shrubs</b>	<b>18" Height</b>	<b>8:1</b>	<b>30%</b>
<b>Perennials</b>	<b>1 Gallon Cont.</b>	<b>25:1</b>	<b>50%</b>
<b>Groundcover seeding</b>	<b>Per seed source recommendations</b>	<b>70 SY area:1</b>	<b>None</b>

(d) The location of replacement trees shall be subject to the approval of the planning commission and shall be such as to provide the optimum enhancement, preservation and protection of woodland areas. Where woodland densities permit, tree relocation or replacement shall be within the same woodland areas as the removed trees. Such woodland replanting shall not be used for the landscaping requirements of the subdivision ordinance or the zoning landscaping, section 2509.

(e) When the proposed tree to be removed has multiple trunks, each multi-stemmed tree caliper DBH inches shall be totaled and then divided by eight (8) to determine the required number or caliper inches of replacement vegetation. Sum DBH calipers shall be rounded down to determine the number of replacement credits required. For example, a multi-stemmed tree with ten-inch, twelve-inch and thirteen-inch trunks ( $10 + 12 + 13 = 34$  divided by  $8 = 4.25$ ). Therefore, rounding to the next full number, 5 replacement credits would be required.

(f) Where tree relocation or replacement is not feasible within the woodland area, the relocation or replacement plantings may be placed elsewhere on the project property.

(g) Where tree relocation or replacement is not feasible within the woodland area, or on the project property, the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the market value for the tree replacement as approved by the planning commission. The city tree fund shall be utilized for the purpose of woodland creation and enhancement, installation of aesthetic landscape vegetation, provision of care and maintenance for public trees and provision and maintenance of specialized tree care equipment. Tree fund plantings shall take place on

public property or within right-of-ways with approval of the agency of jurisdiction. Relocation or replacement plantings may be considered on private property provided that the owner grants a permanent conservation easement and the location is approved by the planning commission.

(h) Where replacements are installed in a currently non-regulated woodland area on the project property, appropriate provision shall be made to guarantee that the replacement trees shall be preserved as planted, such as through a conservation or landscape easement to be granted to the city. Such easement or other provision shall be in a form acceptable to the city attorney and provide for the perpetual preservation of the replacement trees and related vegetation.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-9. Tree protection during construction.**

(a) Before development, land clearing, filling or any land alteration for which a use permit is required by this chapter commences, the developer shall be required to erect for the protection of remaining trees barriers as approved by the city. Such protection shall be maintained and remain in its approved location until such time as it is authorized to be removed by the city or issuance of a final certificate of occupancy. The location of such barriers from protected trees shall be the same separation as is required for trench excavation pursuant to section 11-50 of this Code. During construction, no attachments or wires shall be attached to any of such trees so protected. The construction of barriers shall comply with the following:

(1) Woodland areas shall be separated from construction areas by the installation of "barrier" fencing either of plastic or wood slat materials, a copy of the fence detail is available from the parks, recreation and forestry department or the community development department. These materials shall be attached to five-foot "T" poles spaced at five-foot intervals and shall have a tree protection sign affixed to the fence every fifty (50) feet in such a manner to be clearly visible to workers near the site. The use of chain link fence may also be required by the planning commission in the case of specimen trees or exceptionally valuable woodland or wetland areas. This barrier shall be installed at the critical root zone (CRZ) perimeter of the onsite trees to be protected prior to initiating project construction. Should it not be possible to place the protection fencing at the CRZ of a regulated tree due to practical hardship, the applicant may provide replacement value for the tree into the city tree fund. The applicant may also choose to allow the tree in question to remain at his or her option. Accurate critical root zones must be depicted on the site plan for all regulated trees within fifty (50) feet of proposed grading or construction activities.

(2) If a woodland area is required to be fenced off, and the fence has been taken down without permission, or a violation of the fence area has been documented by a notice of violation by the community development department, and the department of public works has re-erected the normal protective fencing twice, the developer or builder shall be required to install the Michigan State University standard fence detail, a copy of which is available from the parks and forestry department or the community development department.

Barriers will be required for all trees being protected, except in large property areas separate from the construction or land clearing area into which no equipment will venture may be ribboned off by placing stakes a maximum of fifty (50) feet apart and typing ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.

(3) No placement of vehicles, trailers, equipment, construction materials, or temporary structures will occur within the CRZ of protected trees.

(b) It shall be unlawful for any person to conduct any activity within the critical root zone (CRZ) of any tree designated to be retained, including but not limited to the placing of any solvents, material, construction machinery, or soil within the CRZ.

(c) The parks and forestry operations manager, community development department director, or his or her designee shall make a determination as to those trees which can reasonably be expected to survive the permitted activity. Particular consideration shall be given to the impact of changes in grade, deposition of storm water, duration of storm water encroachment, oil leaks, species of the impacted trees, soil types, soil compaction, the distance of earth moving activities from individual trees, and other construction or developmental activities which impact the area around the trees, irrespective of whether the activity is in the immediate vicinity of the affected trees. Trees which cannot be reasonably expected to survive shall be removed. Those trees which are removed pursuant to this section shall be considered in the calculation of replacement trees under section 37-8.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-10. Taking property without compensation.**

(a) This chapter shall not be construed to abrogate rights or authority otherwise provided by law.

(b) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and has been denied a permit or has been made subject to modifications or conditions in the permit under this chapter may file an action in a court of competent jurisdiction.

(c) If the court determines that an action of the city pursuant to this chapter constitutes a taking of the property of a person, then the court shall order the city, at the city's option, to do one or more of the following:

(1) Compensate the property owner for the full amount of the lost value;

(2) Purchase the property in the public interest as determined before its value was affected by this chapter;

(3) Modify its action with respect to the property so as to minimize the detrimental effect to the property's value; and

(4) Modify its action with respect to the property so that the action will not constitute a taking of the property.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

Secs. 37-11--37-25. Reserved.

## **ARTICLE II. PERMIT**

### **Sec. 37-26. Required.**

(a) Except for those activities expressly permitted by section 37-27, it shall be unlawful for any person to conduct any activity within a regulated woodland site without first having obtained a use permit upon proper application including the following activities:

(1) Removing, damaging or destroying any tree or similar woody vegetation of any d.b.h. A woodland area that is also within a wetland or watercourse regulated by article V of chapter 12 shall not be exempt from the requirements of this chapter;

(2) Removing, damaging or destroying any historic or specimen tree; and

(3) Land clearing or grubbing.

(4) Conversion of a farm operation use to a non-farm operation use without the restoration of the affected woodland area on the property pursuant to subsection 37-8(b).

(b) Where a final subdivision plat or a final site development plan which includes activities regulated by this chapter has been reviewed and approved by the city in conformance with the requirements of this chapter, such approval together with any additional terms and conditions attached thereto shall be considered to have completed the requirements for a permit under this chapter which shall then be issued by the city.

(c) Unless the requirements of this chapter can be satisfied by the setting aside without encroachment of sufficient woodland areas, the developer of a single-family residential subdivision plat or single-family residential site condominium shall, as a part of use permit approval under this article, designate building areas for all structures and impervious surfaces on each subdivision lot or site condominium unit. Once such building areas have been approved and made a part of the use permit, no additional woodland use permit shall be required for the erection of structures within such a building area. Activities on a subdivision lot or site condominium unit that extend beyond the confines of such a designated building or impervious area shall require an additional approval pursuant to this chapter, which shall only be approved when it is not otherwise feasible to utilize the lot or site condominium unit for single-family residential purposes. Whenever a building permit is granted for construction of a single-family residence the permit holder shall post a performance guarantee to ensure continued compliance with the use permit granted with the platting of the subdivision or approval of the site condominium. The form of the guarantee shall be in accordance with the provisions of chapter 26.5. The amount of the guarantee shall be based upon a pro rata share of the performance guarantee posted by the subdivision or site condominium developer under subsection 37-30(e)(3). With a posting for a single structure, or with a significant number of postings for multiple residence developments, the developer may apply for a corresponding reduction (or return) of the original performance guarantee posted by the developer under subsection 37-30(e)(3).

(d) A permit shall be required for any slab foundation or contiguous frost-depth footing proposed within a regulated woodland area.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-27. Exceptions.**

Notwithstanding the prohibition of section 37-26, the following activities are permitted within woodland areas without a use permit, unless otherwise prohibited by statute or ordinance:

(1) The transplanting within a twelve-month period of no more than three (3) trees on a given parcel of land within regulated woodland area;

(2) The removal within a twelve-month period of a single tree with a d.b.h. of less than eight (8) inches where a valid certificate of occupancy has been issued;

(3) The removal or trimming of dead, diseased or damaged trees or other woody vegetation, provided that the damage resulted from a nonhuman cause, and provided further that the removal or trimming is in compliance of ANSI standards;

(4) Conservation of soil, vegetation, water, fish, wildlife and other natural resources;

(5) Facilitation of passive outdoor recreation activities, such as the utilization of unpaved trails or woodlands for nature study, hiking, horseback riding, trapping and hunting as otherwise legally permitted and regulated and only to the extent necessary to undertake such activities. The exception for outdoor recreation shall include the development of land for nonmotorized recreational uses.

(6) Bona fide farming, where the farm operation is registered with the city pursuant to chapter 8 of this Code, and forestry and nursery practices, where otherwise legally permitted, and where compatible with the individual woodland ecology and not in conflict with the standards contained in section 37-29 provided that a forest management use

permit is obtained pursuant to subsection 37-8(d) for forestry activities within a woodland area;

(7) The operation and maintenance of existing dams and other water control devices if in compliance with all applicable statutes and ordinances; and

(8) Actions taken in times of emergency, including the repair or restoration of public roads, electrical lines, natural gas lines, water lines, sewage lines and storm drainage systems, when immediate action is necessary to protect public health or safety or to prevent damage to property. A person taking such emergency actions shall within fourteen (14) days thereof provide a report to the planning commission describing the actions taken, the nature of the emergency necessitating the actions, and the extent of any cutting or removal of, or damage to, any trees within the woodland area. The matter shall be reviewed by the parks and forestry operations manager, or community development director or his or her designee, who shall make a determination as to whether the resulting tree cutting, removal or damage was reasonably necessitated by the emergency situation. To the extent the resulting tree cutting, removal or damage exceeds that reasonably necessitated by the emergency situation, the person shall be required to provide replacement trees in accordance with the replacement standards of section 37-8.

(9) The cutting, trimming or removal of trees and other woody vegetation in connection with the construction, maintenance or repair of a natural gas transmission main, electrical line, water main, sewer line and other essential utilities that are located within a private or public easement or property dedicated for such purpose, provided the following conditions are met:

a. If the activity is conducted within an easement, the applicant shall notify the underlying property owner in writing at least fourteen (14) days in advance of the activity, with a copy of the notification forwarded to the community development department;

b. The applicant shall, where possible, protect and maintain historic and specimen trees;

c. If the activity is adjacent to property where there is located a residential dwelling, the applicant shall, where possible, preserve an undisturbed buffer area of vegetation adjacent to such property; and

d. Any area that is cleared shall be cleaned, graded and seeded.

(10) When protected vegetation obstructs any street, sidewalk or pedestrian path to such an extent as it interferes with clear and safe lines of sight.

(11) Any tree that endangers the public health, welfare, or safety such that immediate alteration is required in the opinion of the parks and forestry operations manager or his or her designee.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-28. Contents of application.**

(a) *Required information.* An applicant for a use permit required by this article shall submit the following materials to the city clerk:

(1) A completed use permit application, on a use form prescribed by the city, which includes the following information:

a. The name, address and telephone number of the applicant and of the applicant's agent.

b. The name, address and telephone number of the owner of the property.

c. The project location, including as applicable, the street, road or highway, section number, name of subdivision, and name of any watercourse which will or may be impacted.

d. A detailed description and statement of purpose of the proposed activity.



e. Person or corporate entity performing such services, if known, along with a contact person, address and phone number.

(2) A use permit application fee in an amount as set by resolution of the council;

(3) Where the applicant is not the owner of the property, a written authorization from the owner permitting the proposed activity; and

(4) A site plan, including topographical survey, sealed by a registered engineer or registered surveyor, which includes the following information:

a. The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any;

b. Locations based upon actual field survey of all existing trees by estimated number, size and condition and species and of shrubs and ground cover. For woodland areas in which there will be no development, aerial photography interpretation or sampling methods may be used instead of actual field survey;

c. For all woodland areas in which development is proposed, the woodland survey plan shall be accompanied by a separate key identifying by location all trees eight (8) inches d.b.h. and greater, by size, common, genus and species names (i.e. Red Maple/Acer rubrum) and condition. Such information shall be provided by a registered landscape architect, certified arborist, or registered forester, through an onsite inspection, who must verify the contents by seal and/or registration number with signature, whichever applies. For all trees proposed to remain, a topographic elevation at the base of the trunk shall be indicated. The dripline of affected trees shall be clearly indicated on the plan. All such trees shall be identified in the field by the painting of the identifying numbers in nontoxic paint of a white, yellow or orange color, or by a tree identification tag affixed loosely with a single nail. All trees, shrubs, and groundcover shall be identified by estimated number, size, and species;

d. Existing general soil conditions throughout the parcel;

e. A statement showing how trees not proposed for removal are to be protected during land clearing, construction, and on a permanent basis, including the proposed use of protective barriers, tree wells, tunneling or retaining walls. See section 37-9.

f. Locations and dimensions of all setbacks, easement and existing and proposed public and private utilities;

g. Statements as to proposed grade changes and proposed drainage pattern changes for the lot or parcel, including information as to changes in water levels within regulated woodlands. Existing contour data for the entire property with a vertical contour interval of no more than two (2) feet, and vertical contour data at an interval of no more than one (1) foot for all areas to be disturbed by proposed tree removal operations, extending for a distance of at least fifty (50) feet beyond the limits of such areas. Indicated elevations shall be based on United States Geological Survey datum;

h. The number of trees to be cut which have a d.b.h. of eight (8) inches or more, plus a plan and cost estimate for their replacement per city standard cost figures. The standard cost figures are available at the community development department.

i. Information as to how all trees to be retained shall be identified at the site, whether by painting with water base paint, flagging, etc. prior to field inspection; and

j. The legal property description, zoning classification including adjacent parcels, existing structures, the extent of existing woodland areas, and the size and location of all elements of the proposed activity.

(b) *Alternate site plan information.* Where the proposed activity is located on a site with no trees with a d.b.h. of eight (8) inches or greater, the applicant shall so indicate in his application, and submit a "no tree" affidavit. In such case, the city shall conduct an inspection of the site. If the inspection substantiates the applicant's claim, the applicant shall be relieved of the necessity of providing unnecessary information, such as the

topographic survey, etc. However, where there are trees of less than eight-inch d.b.h. that are otherwise potential good specimens of that particular woodland, additional information will be required such as quality, size, species, health and such additional information as the city may request.

(c) *Land clearing or grubbing.* Where the proposed activity is land clearing or grubbing only the preparation of a site plan which depicts the location of all trees as required by subsection (a)(4)b. shall not be required. However, the applicant shall provide general information as to the number, species and size of the protected trees on the property before a use permit for the clearing or grubbing may be granted.

(d) *Forest management use permit.* An owner may be granted a forest management use permit for the purpose of maintaining and improving a woodland area by professional forestry management methods. Applications for this permit must be accompanied by a management plan for the subject area prepared by a certified arborist, landscape architect or forester licensed and registered in the state. The management plan shall include a description of and a schedule for the program, justifying reasons for the work specified, and a summary of the benefits to be obtained. Work under a forest management use permit shall be directed by a certified arborist landscape architect or licensed and registered forester. Under the forest management use permit, provisions of this chapter which are applicable solely to development or land clearing activities shall not apply. The city shall not levy any fee for this special permit.

(e) *De minimis activities.* Where the proposed activities involve the removal or cutting of no more than three (3) trees of eight-inch d.b.h. or greater within a twelve-month period, and are not taken in conjunction with the development of a parcel or erection of structures on a parcel, the city may waive the requirement for a site plan and permit fees, provided the parks and forestry operations manager, community development director or their designee, is otherwise able to make a determination that the proposed activity will not adversely impact the woodland area or violate the criteria of section 37-29.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-29. Application review standards.**

The following standards shall govern the grant or denial of an application for a use permit required by this article:

(1) No application shall be denied solely on the basis that some trees are growing on the property under consideration. However, the protection and conservation of irreplaceable natural resources from pollution, impairment, or destruction is of paramount concern. Therefore, the preservation of woodlands, trees, similar woody vegetation, and related natural resources shall have priority over development when there are location alternatives.

(2) The integrity of woodland areas shall be maintained irrespective of whether such woodlands cross property lines.

(3) The reviewing authority shall evaluate the quality of the involved woodland area, including in its evaluation consideration of:

- a. Soil quality;
- b. Habitat quality;
- c. Tree species (including diversity of tree species);
- d. Tree size and density;
- e. Health and vigor of tree stand;
- f. Wildlife within the woodland area;
- g. Understory species and quality; and

h. Other factors such as the value of the woodland area as a scenic asset, windblock, noise buffer, environment, asset (i.e.--Cooling effect, etc.), and the value of historic or specimen trees within the woodland area.

(4) The removal or relocation of trees shall be limited to those instances:

a. When necessary for the location of a structure or site improvements and when no feasible and prudent alternative location for the structure or improvements can be had without causing undue hardship; or

b. The tree is dead, diseased, injured and in danger of falling too close to proposed or existing structures, or interferes with existing utility service, interferes with safe vision clearances, or conflicts with other ordinances or regulations.

(5) Where the removal or cutting of any trees with eight-inch d.b.h. or greater is permitted, replacement trees shall be provided in accordance with section 37-8.

(6) The proposed activity shall include necessary provisions for tree protection in accordance with section 37-9.

(7) Where the proposed activity consists of land clearing it shall be limited to designated street rights-of-way, drainage and other utility areas, and areas necessary to the construction of proposed buildings and structures, as depicted on the plat or site plan. Where the proposed activity consists of grubbing, all trees with a d.b.h. of three (3) inches or greater will be left undisturbed. The understory of such trees shall likewise be left undisturbed within the drip line or within an area three (3) feet from the tree, whichever is greater.

(8) Where the proposed activity includes residential development, residential units shall blend into the natural setting of the landscape for the enhancement of the sound, orderly economic growth and development and for the protection of property values in this city. Naturally occurring runoff may pass from one wooded area to a second area without an easement, provided developed runoff is not directed to such second area. Naturally occurring low areas may remain where no developed runoff is directed to such areas. Buildings within regulated woodland shall have gutters and downspouts which direct developed runoff away from regulated woodland either through the building's storm water discharge system or by weeping tile directing water away from the protected woodland.

(9) The proposed activity shall be in compliance with all other applicable statutes and ordinances.

(10) The reviewing authority shall consider the total acreage of woodland existing within the city.

(11) The burden of demonstrating that no feasible and prudent alternative location for structures or improvements without undue hardship shall be upon the applicant.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-30. Application review procedures.**

(a) The parks and forestry operations manager, and community development director or their designees, shall review the submitted application for a use permit required by this article to ensure that all required information has been provided. At the request of the applicant or the city, an administrative review meeting may be held to review the proposed activity in light of the purpose and review standards of this chapter. A field inspection of the site may be conducted. The parks and forestry operations manager and community development director or their designees, shall, after review of the proposed activity, submit a report and recommendations to the planning commission as to the propriety of the proposed use under the review standards and criteria of section 37-29.

(b) Where the proposed activity does not otherwise require site plans or plat approval, the granting or denying of the use permit shall be the responsibility of the planning commission.

(c) Prior to a determination by the planning commission on a use permit application, notice of the application and the date, time and location of the planning commission meeting at which the application will be considered shall be published in the paper of general circulation within the city. A copy of that notice shall be mailed to those persons to whom real property adjacent to the proposed activity is assessed. Prior to a determination on a use permit application by the planning commission, a notice of the pending application shall be published and mailed to those persons to whom real property is assessed (based upon addresses on city assessing records) situated within three hundred (300) feet of the property boundaries of the land for which the permit is proposed. The notice shall indicate a date prior to which written comments regarding the application may be submitted to the city for consideration by the planning commission.

(d) Whenever a use permit application is denied, the reasons for denial shall be transmitted in writing to the applicant.

(e) Whenever a use permit is granted, the planning commission shall:

(1) Impose such conditions on the manner and extent of the proposed activity or use as are necessary to ensure that the intent of this chapter is carried out and that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment, or interference with natural resources and natural processes within the woodland area. A condition to every permit shall be that the grantee, by acceptance of the permit, consents to entry onto the premises by representatives of the city and law enforcement officers to inspect the activities conducted pursuant thereto. In those instances where the permit requires the preservation of a woodland area, the grantee shall provide the city a conservation easement for such area in such form as is acceptable to the city engineer and city attorney. Where the activity includes the development of property for single-family residential use, a condition to the permit shall be that the grantee erect and maintain signage on the property indicating areas of regulated woodland. The signage shall be at such locations approved by the parks and forestry operations manager, community development director, or their designee, and shall remain until all lots or units adjacent to such woodland areas are constructed upon. The signage shall include the telephone number of the parks and forestry operations manager.

(2) Fix a reasonable time within which any woodland operations must be completed.

a. In general, woodland operations are to be completed in a time period consistent with the provisions of chapter 26.5, particularly section 26.5-5(c).

b. If compliance with this chapter will include an obligation to replant two thousand (2,000) trees or more, as calculated under section 37-8, the city council, following review and recommendation by the reviewing authority, may allow an extended period, not to exceed ten (10) years, for the completion of any portion of the replanting requirement to be undertaken off the site of the land which is the subject matter of the permit. If an extension is granted under this subparagraph, the total replanting requirement shall be satisfied, and shall be carried out in equal annual installments during each year of the extension. The first planting-year installment shall be identified in the approval. The precise number of years allowed for the completion of replanting shall be determined based upon a demonstration by the applicant that, unless an extension for the requested period of time is granted, the applicant shall be impaired from carrying out the activity for which the land is being developed. If the replanting period approved by the city will extend over a period of five (5) years or more, the applicant may propose, and the city council may approve, a form of security other than the mechanisms specified in the

following subsection (3), provided, as a condition to approving such alternate form of security, the applicant must demonstrate to the council that the timely replanting requirement shall be fully and lawfully secured.

(3) Require the filing with the city of a performance guarantee to ensure compliance with the approved use permit. Such performance guarantee shall be in accordance with the provisions of chapter 26.5, and shall be in an amount determined necessary by the city to cover the cost of replacing the tree(s) as well as any costs that may be incurred by the city in the reinstallation of protective fencing.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-31. Appeal from granting or denial.**

A permit approved by the planning commission shall not be issued until ten (10) calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a use permit required by this article or other decision hereunder may request an appeal of the decision to the council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The council, upon review, may reverse, affirm or modify the determination and/or permit issued by the planning commission.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-32. Term.**

Any and all permits issued by the city as requirements of this chapter shall be declared null and void if commencement of work so permitted is not started within a reasonable time, but not to exceed six (6) months. But in no case will the permit be valid for more than twelve (12) months. Permits not used within this period will become null and void and future work will require a new application. For purposes of this section a permit shall be used when the work authorized by the permit is completed.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

### **Sec. 37-33. Display of permit.**

The grantee of a permit required by this article shall prominently display on the site the permit issued. Such display shall be continuous while trees are being removed or replaced or while work authorized under the permit is being done, and for at least ten (10) days after the completion thereof. Failure to allow entry for inspection by city representatives pursuant to the conditions attached to the permit shall constitute a violation of this chapter.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

Secs. 37-34--37-40. Reserved.

## **ARTICLE III. DEAD, DAMAGED, OR DANGEROUS TREES ON PRIVATE PROPERTY**

### **Sec. 37-41. Private trees--Clearance.**

Owners of trees on private property shall maintain or treat such trees so that they do not become a danger to the public or to adjacent property and so that they do not harbor dangerous or communicable insect infestation or tree disease. It shall be the responsibility of such owners to remove all dead, diseased or dangerous trees, or any broken or decayed limbs which threaten the safety of the public or are a hazard to adjoining property. Any owner of any property failing to maintain or remove trees in

conformity with this section or section 37-42 shall be notified in writing by the parks and forestry operations manager to do so; which notice shall specify the time period within which such maintenance or removal shall be performed. In determining whether the condition of a tree threatens safety or is a hazard, the parks and forestry operations manager shall utilize the International Society of Arboriculture Guide to Evaluation of Hazard Trees in Urban Areas. Upon the expiration of the notice time period, the parks and forestry operations manager may cause the maintenance or removal to be done. All expenses incurred in performing such work, including administrative expenses, shall be debt due the city from the owner or owners of the property. The parks and forestry operations manager shall provide the city treasurer verification of such costs within ten (10) days of receipt of such verification, the treasurer shall forward a statement of the total charges assessed to the owner as shown by the last current assessment or tax roll, and such assessment shall be payable to the city treasurer within thirty (30) days from the date when the statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property in accordance with chapter 11 of the City Charter. The amount so charged may be discharged at any time by the payment of the amount specified in the statement, together with interest at the rate of six (6) percent per year compiled from the time of filing such certificate with the city assessor. Such amount shall be a debt of the person assessed until paid and, in case of delinquency, may be enforced as delinquent city property taxes or by a suit against such person.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-42. Same--Diseases and infestations.**

When parks and forestry operations manager shall discover that any tree growing on private property within the city is afflicted with any dangerous and communicable insect infestation or tree disease, including, but not limited to Emerald Ash Borer, Dutch elm disease, elm blight, Verticillium (albo-atrum) wilt, Oak wilt or Bronze Birch borer, he shall forthwith serve a written notice upon the owner or his agent, or the occupant of the property describing the tree, its location and the nature of the infestation or tree disease and ordering the owner, agent and occupant to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading thereof, specifying the measures required to be taken. Such order may require the pruning, spraying or destruction of trees as may be reasonably necessary. Every such notice shall be complied with within the time period specified within the notice.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-43. Same--Appeal of destruction order.**

In case the owner, agent or occupant of the property shall feel himself aggrieved at an order of the city requiring the maintenance, removal, treatment or destruction of any tree, he may within forty-eight (48) hours make an appeal to the director of public services by communication filed with the department of public services. The director shall set a time for consideration of the appeal, provide notice of the time to the applicant, and thereafter make a determination as to the appeal.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-44. Same--Owner's failure to comply with destruction order.**

In case the owner, agent and occupant of the property should refuse to carry out the order of the parks and forestry operations manager within the time directed, or in case of an appeal within five (5) days after the manager shall have affirmed such order, the parks and forestry operations manager shall carry out the pruning, spraying or other treatment, maintenance, removal or destruction of the trees as deemed necessary by him. All expenses incurred in performing such work, including administrative expenses, shall be recovered in the manner provided in section 37-41.

(Ord. No. 09-125.21, Pt. I, 3-9-09)

**Sec. 37-45. Violations.**

In addition to the other remedies provided in this article, the failure of a property owner to comply with a notice from the parks and forestry operations manager requiring the treatment, maintenance, removal or destruction of a tree shall be deemed a violation of this Code.

(Ord. No. 09-125.21, Pt. I, 3-9-09)