

ORDINANCE NUMBER 2008-001

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF CLARE.

Chapter 20, Article VII, Section 20-200 of the Code of Ordinances, City of Clare, Michigan, is hereby created to read as follows:

CHAPTER 20
MUNICIPAL TREE ORDINANCE
ARTICLE VII

Sec. 20-200. Title

This ordinance shall be known as the Municipal Tree Ordinance for the City of Clare, in Clare County, State of Michigan.

Sec. 20-201. Purpose/Intent

The purpose of this ordinance is to promote the health, safety, welfare, and quality of life of the residents of the City through the protection of specified trees located on public property within the City, and the establishment of standards for removal, maintenance, and planting of trees. In establishing these procedures and standards, it is the City's intent to encourage the preservation of trees.

Sec. 20-202. Applicability/Jurisdiction

The City Manager, or his or her 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 highways and public places of the City 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. The City Manager, or his or her designee, shall also have exclusive jurisdiction as to all trees, plants, and shrubs located on private property that constitute a hazard or threat as described herein.

Sec. 20-203. Definitions

- A. **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.

- B. Highway. Includes all land lying between the property lines on either side of all public streets, boulevards, and alleys.
- C. Private Trees. Any tree not located on property owned or controlled by the municipality.
- D. Public Place. Any public street, public highway, public park or any property owned or held by the municipality within the boundaries of the municipality.
- E. Public Tree. Any tree located on property owned or controlled by the municipality.
- F. Roadway. That part of the highway located within the curb lines which is used for vehicular travel and, where there are no curbs, that part of the highway which is used for vehicular travel, but which also includes the shoulders.
- G. 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.
- H. Small Tree. Those trees attaining a height greater than fifteen (15) feet to thirty (30) feet in height at maturity.
- I. 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 municipality.
- J. Tree. A woody perennial plant, usually having one dominant vertical trunk and capable of achieving a height greater than fifteen (15) feet.
- K. Tree Advocacy Group. A group of people designated by ordinance to advise a Director of Public Works on matters related to an urban and community forestry program.

Sec. 20-204. Person or Department Responsible for Trees

The Director of Public Works, as designee of the City Manager, shall have authority over any and all trees on public right-of-ways or any public property in the City of Clare.

The Director of Public Works shall have the following general powers:

- A. To direct, manage, supervise, and control the community street tree program to include all planting, removal, maintenance, and protection of all trees and shrubs on public areas and private property, as described in Section 20-202.
- B. To guard all trees and shrubs within the municipality to prevent the spread of disease or pests and to eliminate dangerous conditions that may affect the life, health, or safety of persons or property.
- C. Such other powers and duties as are provided by the laws of Michigan, by ordinance of the community, and the tree advocacy group.

Sec. 20-205. Tree Advocacy Group

There is hereby created and established a tree advocacy group of the City of Clare, which shall consist of five (5) members, citizens and residents of this municipality, who shall be appointed by the mayor with the approval of the City Commission. Members of the tree advocacy group shall serve without compensation. Members may, however, be reimbursed for out-of-pocket expenditures made in connection with their duties. The term of the tree advocacy group shall be three (3) years, except that the term of two (2) members appointed to the first tree advocacy group shall be only one (1) year and the term of two (2) members appointed to the first tree advocacy group shall be for two (2) years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term. The Director of Public Works and a representative from the City Commission will serve as ex-officio, nonvoting, members of the tree advocacy group. The members shall come from different interest groups including homeowners, tree professionals, street department, and municipal government.

The tree advocacy group shall have the following general duties:

- A. Assist the Director of Public Works in the development of a comprehensive plan for the City of Clare, including but not limited to planning, tree planting, and maintenance programs for all public trees.
- B. Promote the goals of the tree program.
- C. Coordinating annual Arbor Day celebrations.

- D. Coordinating with citizens groups – tree plantings, volunteer efforts to install or maintain plantings or other beautification projects on public land.
- E. Provide a means to involve the public in a community forestry management plan.
- F. Promote new and existing tree programs by motivating both local government and the public to support community forestry management.

Sec. 20-206. Authority to Enforce

The City Manager, or his or her designee, is hereby given the authority to perform site inspections and enforce all provisions of this ordinance on all public property and private property, as described in Section 20-202.

Sec. 20-207. Authority to Accept Monies

The tree advocacy group may act as trustee for any property, assets or funds donated to the City of Clare for the care and maintenance of public trees, provided the donor designates or provides for the designation of the tree advocacy group as such trustee. In such an event, the tree advocacy group shall have all those powers and duties necessary to carry out the purpose of the trust.

Sec. 20-208. Permits

The permit process shall have the following general characteristics:

- A. No person, firm or corporation shall plant, trim or remove a tree, shrub or vine on any property under the control of the City of Clare without first obtaining a permit from the Director of Public Works. No permit, however, shall be required for any public service company or municipal employee doing such work in the pursuit of their public service endeavors.
- B. An application for a permit shall be made at least forty-eight (48) hours in advance of the date the work is to be performed and shall describe the work to be done.
- C. Each permit shall designate the type of tree and place where such tree is to be planted or removed in accordance with this ordinance.
- D. A permit shall be issued without charge and shall expire sixty (60) days after the date of issue.

- E. Applications submitted by owners of the abutting property for the planting of trees, shrubs and vines need not be accompanied by a certificate of insurance but all other applicants shall have attached a current certificate of insurance in the amount of \$1,000,000.
- F. Any work done under a written permit must be performed in strict accordance with the terms of this ordinance and under the supervision and direction of the Director of Public Works.
- G. If the work described in the application is not completed within forty-eight (48) hours of the date of issue the applicant shall notify the Director of Public Works upon completion of the work or any major portion of it.

Sec. 20-209. 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.

Sec. 20-210. Tree Protection/Preservation

- A. Prohibiting the Mutilation of Public Trees.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten (10) feet of any tree, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor except by special written permit from the Director of Public Works, and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice thereof by the Director of Public Works, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the Director of Public Works.

- B. Requiring Protection of Trees During Construction, New Developments, Sidewalk Repair, Utility Work Below Ground.

During any construction, repair, alteration or removal of any building or structure, it shall be unlawful for any person to leave any tree, bush or shrub within any public highway or public place without sufficient guard or protection so as to prevent injury thereto by reason of such construction, repair, alteration or removal. No tree or shrub shall be moved or removed from any public highway or public place without the written consent of the Director of Public Works. All such removal or moving shall be done at the expense of the applicant. Any tree or shrub destroyed by reason of removing or moving shall be replaced by the applicant at his or her expense.

C. Requiring Protection of Trees During Utility Work Above Ground.

Utility companies are responsible for conducting a courtesy call to the Director of Public Works to review all upcoming utility line clearance work to be performed within the following four to six 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 municipality, for the construction of any public improvement, the Director of Public Works, whenever practicable, shall require the planting of a similar tree or shrub to take the place of those removed.

Sec. 20-211. Obstruction.

Any tree or shrub growing on private property, but so located as to extend its branches over an adjoining highway, shall be so trimmed by the owner of the property, or his or her agent, on which the tree, bush, or shrub is located so that there shall be a clear height, located within the parameters of the highway, unobstructed by any branches, of eight (8) feet above the surface of any public sidewalk and fifteen (15) feet above the surface of the roadway, and such owner, or his or her agent, shall also remove all dead branches or stubs on such trees, bushes, or shrubs which, as determined by the Director of Public Works, have become a menace to any traveler on an adjoining highway. The Director of Public Works is authorized to have removed any part of any trees or shrubs which encroach into the highway as directed above, and shall bill the property owner for the cost of said work. Failure to pay for said work on the part of any property owner shall cause said charge to become a lien

on the property, and said amount shall be added to the tax bill for that property.

Sec. 20-212. Nuisance and Condemnation

The Director of Public Works, or his or her designee, shall have the authority, and it shall be his or her duty, to order the pruning, tree care or removal of trees, shrubs or plants upon private property when such trees, shrubs or plants constitute a public nuisance, or when he or she shall find such action necessary in order to preserve the public health, safety and welfare.

Any dead, dangerous or diseased tree on private property, insofar as it affects the public health, safety and welfare, is hereby declared to be a public nuisance, dangerous to life and limb. For the purposes of this section: a dead tree is any tree with respect thereto the Director of Public Works, or his or her designee has determined that no part thereof is living; a dangerous tree is any tree, or part thereof, living or dead, which the Director of Public Works or his or her designee shall find in such a condition and is so located as to constitute a potential danger to persons or property on public space in the vicinity of the tree; a diseased tree is any tree, on private property, in such a condition of infection from a major pathogenic disease or from fungus or insect pests as to constitute, in the opinion of the Director of Public Works or his or her designee, a threat to the health of any other tree.

A. Dead or Diseased Tree Removal on Private Property.

The City of Clare shall have the right to cause the removal of any dead or diseased trees on private property within the municipality, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the municipality. The Director of Public Works will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City of Clare shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

Sec. 20-213. Authorized Appeals

A. Administrative Review

The zoning board of appeals shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the City Manager, Director of Public

Works or by any other official or by the planning commission in administering or enforcing the provisions of this chapter.

B. Interpretation of the Chapter

The zoning board of appeals shall hear and decide upon requests to:

1. Interpret the provisions of this chapter when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such requests, the zoning board of appeals shall ensure that its interpretation is consistent with the intent and purpose of the chapter, the article in which the language in questions is contained and all other relevant provisions in the chapter.
2. Hear and determine the facts and application of this chapter as to particular trees, shrubs or property.

C. Variance

The zoning board of appeals shall have the power to authorize specific variances from the requirements of this chapter's regulations, provided that all the required findings listed below are met and the record of proceedings of the zoning board of appeals contains evidence supporting each conclusion:

1. The strict enforcement of the provisions of this chapter would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners within the City.
2. There are conditions and circumstances unique to the property which are not similarly applicable to other properties.
3. The conditions and circumstances unique to the property were not created by the owner, or his predecessor.
4. The requested variance will not grant special privileges that are denied other properties similarly situated.
5. The requested variance will not be contrary to the spirit and intent of this ordinance.

D. Conditions

The zoning board of appeals may impose conditions on a decision. Conditions imposed shall do all of the following:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as social and economic wellbeing of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use, or activity, and the community as a whole.
2. Be related to valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of these regulations; be related to the standards established in the chapter for the preservation of trees and be necessary to ensure compliance with those standards.
4. The conditions imposed shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.

E. Rehearing

No rehearing on an application denied by the zoning board of appeals shall be considered except upon the grounds of newly discovered evidence of a falsehood previously relied upon which is found upon inspection by the zoning board of appeals to be valid. A rehearing shall be processed in the same manner as the original application, including payment of the required fee. A request for rehearing shall be made on behalf of the applicant by either the City Commission, the zoning board of appeals or the City Manager, within fourteen (14) days.

F. Reapplication

After fourteen (14) days following a decision by the zoning board of appeals have expired, no application for a variance, ordinance interpretation, or appeal shall be resubmitted for a period of one (1) year from the date of the last denial, except upon proof of changed conditions found upon inspection by the zoning board of appeals to be valid.

Sec. 20-214. Interference

It shall be unlawful for any person to prevent, delay, interfere, or cause or authorize any interference or delay with the City Manager or any of his or her employees, agents, or servants, while they are engaged in and about the planting, cultivating, mulching, pruning, spraying or removing

of any trees, plants or shrubs in or upon any public highway or public place or upon any private grounds, as authorized in this ordinance, or in removing any device attached to such tree, plant or shrub as may be necessary for the protection and care of any such tree, plant or shrub in accordance with the requirements of this ordinance.

Sec. 20-215. General Penalty; Continuing Violations

For the purpose of this section, the term "violation of this Code" shall mean any of the following:

- A. Doing an act that is prohibited or made or declared unlawful, an offense or a violation by ordinance or by rule or regulation authorized by ordinance.
- B. Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- C. Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense or a violation, or by ordinance or by rule or regulation authorized by ordinance.

For the purposes of this section, the term "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

Except as specifically provided otherwise by state law or city ordinance, all violations of this Code are misdemeanors. Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code that is a misdemeanor shall be punished by a fine not to exceed \$500.00 and costs of prosecution, or by imprisonment for a period of not more than ninety (90) days, or by both such fine and imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is ninety-three (93) days, is punishable by a fine not to exceed \$500.00 and costs of prosecution, or by imprisonment for a period of not more than ninety-three (93) days, or by both such fine and imprisonment.

Except as otherwise provided by law or ordinance, with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense. As to other violations, each violation constitutes a separate offense. Violations of this Code that are continuous with respect to time are a public nuisance and may be

abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or civil or quasi-judicial enforcement. The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise, or other administrative sanctions.

Sec. 20-216. 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 City Manager. This section shall not be used to circumvent the tree ordinance.