

City of Douglas – Tree Ordinance

CHAPTER _____

TREE PROTECTION

Section 1: Findings and Purpose.

The tree canopy contributes to the distinctive and rural visual quality of the City of Douglas, and trees are important natural resources and assets of the City that residents and visitors admire and cherish. The city's trees provide a vital link to nature and improve the human habitat by softening the visual landscape, improving air quality, creating habitat for birds and wildlife, reducing flooding and erosion, protecting against wind and heat, providing important physical, aesthetic, recreational, and economic benefits to city residents, and supporting property values. Tree resources in Douglas are also part of the essential mix that contributes to tourism, that is so important to the local economy. The spread of development, the threat of overdevelopment, new construction, and increasing demands upon natural resources have the effect of encroaching upon, despoiling, threatening or eliminating many mature trees and the natural resources and processes associated with them. Therefore, the purpose of this chapter is to promote the health, safety and general welfare of city residents through the regulatory program set forth in this chapter, which is designed to protect, preserve and conserve mature trees, manage and provide oversight of the removal of trees, and provide for replacement of trees removed in the city.

Section 2 Definitions.

The following terms and their derivatives shall have the following meanings:

- a) Building Envelope: The ground area of a lot or parcel of land enclosed or to be enclosed by the exterior walls or perimeter (i.e., the “footprint”) of principal and accessory buildings and associated improvements, including but not limited to pools, decks, patios, walks, tennis courts, driveways, and utility services.
- b) Diameter Breast Height (DBH): A tree's diameter in inches measured 4.5 feet above ground.
- c) Drip Line: An imaginary vertical line extending downward from the outermost tips of a tree's branches to the ground.
- d) Girdling: The cutting or removal of the outer bark and conducting tissues of a tree potentially causing death by interrupting the circulation of water and nutrients.
- e) Heritage Tree: A tree that is included in American Forest's National Register of Big Trees, the Michigan Botanical Club's Michigan Champion Trees List.

- f) Person: Any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the city.
- g) Protected Tree: Any tree that is six inches DBH or greater in size.
- h) Remove or Removal: The act of removing, relocating or destroying a tree by digging it up or cutting it down, or the effective removal or destruction through mutilation, vandalism, damage, poison, girdling, topping, failure to protect trees during construction, filling, storage or compression of soil or material within the drip line, or other action that are likely to cause or hasten the death of a tree.
- i) Topping: Severe cutting back of limbs to stubs larger than three inches in diameter within the tree crown to such degree so as to remove the normal canopy and disfigure the tree. Other names for topping include “heading”, “tipping”, “hat-racking”, and “rounding-over”.

Section 3 Applicability of Chapter.

This chapter shall apply to all lots and parcels (both public and private) of land in the city and shall be in addition to requirements imposed by any other city ordinances.

Section 4 Tree Removal Permit Required.

Except as otherwise provided in the exemptions in Section 5 below, a tree removal permit shall be required prior to the removal, relocation or destruction of any protected tree.

Section 5 Exemptions.

The following activities are exempt from the provisions of this chapter and are allowed without a tree removal permit, unless otherwise prohibited by statute or ordinance:

- a) Removal of non-protected trees;
- b) Removal of up to two protected trees during any 12-month period on lots or parcels containing a one-family or two-family home. This exemption shall not apply to removal of heritage trees;
- c) Removal, pruning or trimming of protected trees within public or private roads or utility rights-of-way or easements in connection with the installation, repair, operation, replacement or maintenance of roads, drains, sewers, sidewalks, and water, electric, gas, cable television, telephone, telecommunication, or other public service or utility lines and facilities, provided that such activities are overseen by a certified arborist or forester and prudent and reasonable efforts are made to prevent or minimize protected tree loss or damage;
- d) Ordinary trimming and pruning of protected trees as part of landscape maintenance.

- e) Removal or trimming of dead, severely diseased or severely damaged trees, provided that such death, disease or damage results from a natural cause and not from the action or conduct of the owner or occupant (or contractor or agent thereof) of the subject property;
- f) Removal of protected trees (but not including Heritage Trees) located within ten feet of any existing principal building, or within five feet of any existing accessory building to reasonably avoid actual or threatened damage to such buildings.
- g) Removal of protected trees (but not including Heritage Trees) located within ten feet of a proposed building envelope for a principal building, or within five of a proposed building envelope for an accessory building for which a building permit has been issued; or
- h) Removal of protected trees that are recommended for removal by a landscape or forestry professional that meet professional forestry management practices.

Section 6 Application Procedure:

When a tree removal permit is required, an application shall be filed with the city Zoning Administrator for review and processing. The application shall be submitted together with a tree location survey, a non-refundable application/permit fee set by resolution of the City Council, and any other information required under this chapter, prior to or concurrent with the submission of a plat or site plan or application for a building permit, whichever may be required.

- a) Site Plan, Plat or Building Permit. Where a site plan, plat or building permit is required for the proposed activity, the tree location survey shall be considered as part of the site plan, plat or building permit review process. Site plan, plat or building permit approval must precede issuance of a tree removal permit.
- b) No Site Plan or Plat. Where no site plan or plat is required, the city shall process, review and render a decision on the tree removal permit application within ten days after receiving the application and all required information in complete and acceptable form.
- c) Tree Location Survey Guidelines. The tree location survey shall have a minimum scale of 1 inch = 100 feet and shall include the following information:
 - 1) Legal description, shape, boundaries, and dimensions of the lot or parcel, together with the existing and proposed location of all structures and improvements, including existing and proposed utilities, driveways, walks, drains, swales, wetlands, watercourses, ponds and other significant topographic, man-made or natural features. The location of proposed structures or improvements must also be staked in the field.
 - 2) Location and dimensions of all required setbacks and existing and proposed easements.
 - 3) Designation of existing topography and any grade changes proposed for the property, together with an explanation of how proposed grade changes may affect protected trees.

4) Location and numbering of all protected trees proposed for removal both on the site and adjoining road right-of-way. Protected trees that may be at risk for damage should also be included. Tree sizes, common name and condition should be identified. Protected trees that are also Heritage Trees should also be identified as such.

5) For an application submitted in connection with a site plan or plat, proposed building envelopes shall be designated, plus an area ten feet outside the building envelope.

6) Tree location surveys shall be performed by actual field survey by a registered land surveyor and verified on-site by a registered landscape architect, certified arborist or forester for projects requiring site plan or plat review. Both must be identified by name, address and telephone number on the survey. For a single family lot the owner may plot the required information on a survey or other to-scale drawing that shows the lot dimensions and identifies the location of buildings and protected trees within two feet of accuracy.

7) An explanation and depiction of how protected trees proposed to remain will be protected during land clearance, construction, and development.

8) A plan for tree replacement, including number, size and species, conforming to the requirements of this chapter.

9) For parcels five acres or larger, and aerial photo (1 inch = 100 feet minimum scale) shall be provided (these photos are available through the Allegan County LIS Department).

10) These survey requirements may be waived, in whole or in part, by the Zoning Administrator for areas determined to be outside an area of impact for the project. In the event that such areas become impacted by the project, the Zoning Administrator may temporarily issue a stop work order on the project until a revised protected tree survey can be prepared, submitted, and approved.

d) On-Site Examination in Lieu of Tree Location Survey. If deemed adequate by the Zoning Administrator, an on-site examination may be made by the Zoning Administrator in lieu of the tree location survey requirements in the following circumstances:

1) Where the tree removal permit application pertains to removal of protected trees on a single-family or two-family residential lot or parcel; or

2) Where no more than four protected trees are proposed for removal, provided that none of the trees proposed for removal are heritage trees.

Section 7 Review and Decision.

a) Decision Making Authority. The decision to grant, grant with conditions, or deny a tree removal permit application shall be made as follows:

1) Site plan or plat. Where a tree removal permit application is submitted in connection with a plat or site plan, the city's Planning Commission shall have the authority to take action on the tree removal permit application on all those cases for which the Planning Commission is the final approving body. For plats and site plans which require City Council approval, the Planning Commission shall make a recommendation to the City Council regarding the tree removal application and the City Council shall have the authority to make the decision regarding the application. The Zoning Administrator shall have the authority to issue the decision of either the Planning Commission or the City Council to the applicant in either the form of a permit or formal response letter.

2) No site plan or plat. Where site plan or subdivision plat review is not required for the proposed activity associated with the tree removal, the Zoning Administrator shall be responsible for reviewing and rendering a decision on the tree removal permit application. Any decision by the Zoning Administrator to deny an application shall be in writing and shall set forth the reasons for denial.

3) Appeal of Decision. Any applicant who is aggrieved by any decision made by the Planning Commission, City Council, or Zoning Administrator may appeal to the Tree Ordinance Appeal Board by submitting an appeal form to the Zoning Administrator. The Zoning Administrator shall schedule a meeting of the Appeal Board within 14 days of receiving the completed appeal form. The Appeal Board shall have the power to affirm, modify or reverse any decision made by the Planning Commission, City Council, or Zoning Administrator only as it relates to a decision made pursuant to this ordinance.

b) Assumption Relative to New Construction/Development. Where a plat, site plan or building permit has been submitted and new construction or development is proposed, it shall be assumed for purposes of this chapter, including but not limited to the computation of replacement tree requirements, that all protected trees located within the designated building envelope(s) or within ten feet thereof, or within existing or proposed rights-of-way, utility easements, areas of site grading or storm water detention/retention areas will be removed regardless of whether the permit applicant presently intends to physically remove those trees.

c) Review Criteria. When reviewing an application for a tree removal permit, the Planning Commission, City Council, or Zoning Administrator shall consider whether:

1) A satisfactory and viable plan designed and intended to avoid or minimize negative impacts to protected trees has been presented;

2) There are desirable, prudent and reasonably feasible alternatives that would reduce or avoid negative impacts to protected trees.

3) Trees proposed for removal pose a safety hazard; cause unsafe vision clearance or threaten to injure, damage or disrupt persons, property or a utility service; prevent or obstruct access to a lot or parcel; or unreasonably prevent development, improvement or use of a lot or parcel. It is the intent of this provision that a permit should not be granted for the removal

of a protected tree where a reasonable alternative design solution exists that is consistent with the permitted use of the property;

4) The proposed tree removal does not threaten the public health or safety or materially increase the risk of flooding or erosion on the subject or adjacent property, nor will it endanger a wetland or watercourse;

5) No alternative location for the proposed structure or improvement that necessitates the removal of a protected tree can be achieved without causing undue hardship to the applicant.

6) Heritage trees will be preserved and protected to the fullest extent that is reasonable and feasible; and

7) The application complies with the tree replacement requirements of this chapter.

- d) Plat, Site Plan or Building Permit Review. When a plat, site plan or building permit is submitted in connection with a tree removal permit application and the tree removal permit application is denied, the plat, site plan, or building permit shall also be denied or else tabled unless and until the applicant modifies the plan to satisfactorily reduce or eliminate the negative impact on protected trees.
- e) Conditions. The Planning Commission, City Council, or Zoning Administrator may attach reasonable conditions to the approval of a tree removal permit considered necessary to ensure the intent of this chapter will be fulfilled, and to minimize damage to, encroachment upon, or interference with protected trees.
- f) Tree Replacement. The approving body or individual shall at the time a tree removal permit is granted, specify the time by which tree replacement required under Section 9 must be completed.
- g) Performance Guarantee. The Planning Commission, City Council, or Zoning Administrator may require a performance guarantee in the form of a cash deposit, corporate surety bond, irrevocable bank letter of credit, or such other form that is acceptable to the city, in an amount determined adequate by the approving body or individual to guarantee an applicant's compliance with the tree removal permit, and conditions attached thereto, and the requirements of this chapter.
- h) Consultants. The city may engage consultants to review and advise the city regarding the tree removal permit application, such as but not limited to a forester, arborist, landscape architect, planner or engineer. The applicant shall be responsible for payment to the city of all review expenses related to a consultant's review. The city shall provide to the applicant copies of all invoices for such review services.

Section 8 Permit Duration

- a) For tree removal permits submitted in connection with an application for plat or site plan approval or a building permit, a tree removal permit shall not be issued nor be effective, nor

shall the permit holder remove or cause the removal of any protected tree until after final approval of the site plan, preliminary plat or building permit has been obtained and, if applicable the City Engineer has approved construction and engineering plans for the proposed construction or development activity.

- b) A tree removal permit shall remain in effect for one year or the duration of the approved building permit, site plan or plat, if any, whichever period is greater. Due to Oak Wilt disease, oak trees shall only be permitted to be trimmed during their dormant period. (November through March).
- c) Upon issuance of a tree removal permit the permit holder shall post the permit in a location that is visible to the street prior to the start of the tree removal work, and keep it posted until the work is complete.

Section 9 Tree Replacement.

- a) Requirement. A tree removal permit holder shall replace every removed protected tree in the following manner:
 - 1. The sum of the diameter of the replacement trees shall be equal to the sum of the DBH of the trees that are being replaced for the first five trees removed, for each additional tree removed (beyond the first five) the replacement trees shall be equal to fifty percent (50%) of the DBH of the trees that are being replaced.
 - 2. The city may allow the tree removal permit holder to make a payment to the city's Tree Fund in lieu of installing the required replacement trees. Payment shall be made in accordance with a fee schedule approved by the Douglas City Council. Fees shall be charged consistent with the associated cost of purchase and installation of the required number of replacement trees.
- b) Deciduous Trees. All deciduous replacement trees must measure at least 3-inch diameter at six inches above ground. However, for every additional one half-inch increment a replacement tree exceeds the minimum 3-inch diameter, the city shall credit the permit holder with having replaced an additional one-half tree.
- c) Coniferous Trees. All coniferous replacement trees must measure at least 10 feet in height. However, for every additional one foot increment a replacement tree exceeds 10 feet, the city shall credit the permit holder as having replaced an additional one-half tree.
- d) Heritage Trees. When a heritage tree is permitted to be removed, replacement trees shall be provided to a minimum of 50% of DBH of the heritage tree being removed. Such replacement trees may be provided individually or on a cumulative basis to meet the 50% DBH requirement.
- e) Dense Woods Option. As an option or partial alternative to the above, the city may approve replacement trees that are smaller in size in situations where the intent is to recreate or create

a densely wooded area. This option shall consist of tightly grouping trees that are a minimum of ¾-inch diameter, and shall be used only in situation and locations where it is appropriate to create a densely wooded effect. When this option is used, the sum of the diameter of the replacement trees shall be equal to the sum of the DBH of the trees that are being replaced.

- f) Quality. Replacement trees shall have shade potential and other characteristics determined by the city to be comparable to the removed trees and shall be Michigan Department of Agriculture Nursery Grade No. 1 or better.
- g) Planting and Guarantee. Replacement trees shall be staked, wrapped, fertilized and mulched, and shall be guaranteed by the permit holder to exhibit a normal growth cycle for at least one year following planting.
- h) Damage to Saved Trees. Permit holders shall be required to replace protected trees originally intended to be saved when such trees become excessively damaged during construction or development.
- i) Replacement Tree Location. The city shall approve relocation or replacement tree location to provide optimum enhancement, preservation and protection of trees and wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced on-site and within the same general area as trees removed, but such trees shall not be relocated or replaced in the building envelope of a structure or within 10 feet thereof, nor shall such trees substitute for or count toward landscape screening or buffer requirements that may be imposed under other city ordinances.
- j) Off-site Relocation or Replacement. Where it is not feasible or desirable to relocate or replace trees on-site, relocation or replacement may be made at another location approved by the city.
- k) City Tree Fund. The city shall establish a Tree Fund for the purpose of planning, replacing, maintaining and preserving trees in the city.

Section 10 Tree Protection During Construction or Development.

- a) Prior to the land clearing or tree removal state of development or construction, the tree removal permit holder shall clearly mark by painting, flagging, or other approved method, all trees to be removed, and shall erect and maintain suitable barriers to protect remaining protected trees. Protective barriers must be inspected and approved by the city before the work begins. Protective barriers shall be kept in place until the city authorizes their removal.
- b) The permit holder shall not cause or allow any construction or development activity to occur within the drip line of a protected tree proposed to remain, nor shall any solvents, building material, vehicles, construction equipment, soil deposits or fill, or other harmful materials be allowed to be placed, kept, parked or stored within the drip line of such trees.

- c) No damaging wire, sign or other device shall be attached to any protected tree proposed to remain.

Section 11 Enforcement and Administration.

- a) This chapter shall be enforceable by the Zoning Administrator, or by the City Manager in the absence of the Zoning Administrator.
- b) To ensure enforcement of this chapter and the approved plan for tree removal and replacement, various inspections may be performed at the site at the direction of the city. The tree removal permit holder shall not interfere with or prevent such inspections, and the permit holder will be responsible for any inspection fees.

Section 12 Severability.

Each of the provision of this ordinance is severable and if any profision is held invalid for any reason, the remaining provisions shall not be affected but shall remain in full force and affect.

Section 13 Variance.

The tree ordinance Appeal Board may grant a variance from the requirements of this chapter when undue hardship will result from strict compliance. In granting a variance, the Appeal Board may attach conditions the Board deems necessary or appropriate to further the public interest in tree protection.

Section 14 Penalties, Sanctions, Remedies.

- a) Any person who removes a non-exempt protected tree or violates any provision of this chapter or any term or condition of a tree removal permit shall be responsible for a municipal civil infraction and shall be subject to the penalties, sanctions and remedies prescribed in Section ___ of these Codified Ordinances.
- b) Each violation of this chapter or unauthorized removal of a protected tree shall be deemed a separate offense.
- c) Any act performed or perpetrated in violation of this chapter is declared to be a nuisance per se, and the city may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.
- d) The city may issue a stop work order or withhold issuance fo certificates of occupancy, permits or inspections until the provisions of this chapter, the tree removal permit, or any conditions attached thereto, have been fulfilled. Any official of the city may issue a stop work order on any project for which the contractor or owner on the site cannot provide a copy of the permit authorizing the tree removal activity.

- e) The city may require replacement of illegally removed trees on an inch-for-inch basis or payment to the City Tree Fund.