

City of Southgate – Tree Ordinance

# CHAPTER 1028

## Woodlands and Tree Preservation

EDITOR'S NOTE: This chapter, previously titled "Trees," and being a codification of 1974 Code Sections 3.11 to 3.21 and Ordinance 483, passed August 29, 1990, was repealed in its entirety and re-enacted under its present title by Ordinance 682, passed August 18, 1999.

- [1028.01](#) Findings.
- [1028.02](#) Purposes.
- [1028.03](#) Definitions.
- [1028.04](#) Authority of department of public services; rules and regulations.
- [1028.05](#) Woodlands map.
- [1028.06](#) Tree permit required.
- [1028.07](#) Exceptions.
- [1028.08](#) Application for tree permit.
- [1028.09](#) Review of tree permit application.
- [1028.10](#) Applications which qualify for a mandatory tree permit.
- [1028.11](#) Applications which do not qualify for a mandatory tree permit.
- [1028.12](#) Tree protection prior to and during construction.
- [1028.13](#) Replacement or relocation of trees; City Tree Fund.
- [1028.14](#) Landmark trees.
- [1028.15](#) Fees generally.
- [1028.16](#) Fee for illegally removed trees.

- [1028.17](#) Noncompliance with chapter; notice; remedies of City.
- [1028.18](#) Injunction.
- [1028.19](#) Stop-work order.
- [1028.20](#) Approved site plans and plats.
- [1028.21](#) Variance for hardship.
- [1028.22](#) Height of shrubs on corner lots.
- [1028.23](#) Diseased trees.
- [1028.99](#) Penalty.

#### CROSS REFERENCES

Trees and shrubs - see CHTR. Sec. 194

Box elder trees, female, as nuisance - see M.C.L.A.

Sec. 124.151

Cutting or destroying trees - see M.C.L.A. Secs. 247.235,  
247.241, 752.751 et seq.

Malicious destruction of trees - see M.C.L.A. Sec. 750.382

Weeds - see GEN. OFF. Ch. 664

Composting of leaves - see S.U. & P.S. 1060.08(e)

Street trees in subdivisions - see P. & Z. 1248.11

#### **1028.01 FINDINGS.**

The City of Southgate 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, woodlands 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, recreational, health and economic assets to existing and future residents of the City. Specifically, the City finds:

(a) That trees and woodlands protect the public health through the absorption of air pollutants and contamination, by the reduction of excessive noise and mental and physical damage related to noise pollution, and through their cooling effect in the summer months;

(b) That trees and woodlands are an essential component of the general welfare of the City by maintaining natural beauty, recreational opportunities, wildlife habitat, and irreplaceable heritage for existing and future City residents;

(c) That trees and woodlands play an important role in filtering waste water which passes through the ground from the surface to ground water tables and lower aquifers;

(d) That trees and woodlands, through their root systems, stabilize the soil and play an important and effective part in City-wide soil conservation, erosion control, and flood control;

(e) That trees and woodlands appreciably reduce the carbon dioxide content and increase the oxygen content of the air and play a vital role in purifying the air; and

(f) That the protection of such natural resources is a matter of paramount public concern, as provided by Article IV, Section 52, of the Constitution of the State of Michigan and the Michigan Environmental Protection Act of 1970, being M.C.L.A. 691.1201 et seq.

(Ord. 682. Passed 8-18-99.)

## **1028.02 PURPOSES.**

The purposes of this chapter are:

(a) To provide for the protection, preservation, 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;

(b) To protect the trees, woodlands, 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 and ecological or historical significance;

(c) To provide for the paramount public concern for these natural resources in the interest of the health, safety and general welfare of the residents of the City. (Ord. 682. Passed 8-18-99.)

### **1028.03 DEFINITIONS.**

The following definitions shall apply in this chapter:

(a) **Activity** shall mean any use, operation, development or action caused by any person, including, but not limited to, constructing, operating or maintaining any use or development; erecting buildings or other structures; depositing or removing material; dredging; ditching; land balancing; draining or diverting water; pumping or discharging surface water; grading; paving; tree removal or other vegetation removal; and excavation, mining or drilling operations.

(b) **City** shall mean the City of Southgate.

(c) **Department** shall mean the City of Southgate Department of Public Services.

(d) **Development** shall mean man-made changes to improved or unimproved real estate including, but not limited to, buildings or other structures and mining, dredging, filling, grading, paving, excavation or drilling operations.

(e) **D.B.H.** shall mean diameter at breast height, or the diameter in inches of a tree measured at four and one-half feet above the existing grade.

(f) **Director** shall mean the City of Southgate Public Services Director.

(g) **Drip Line** shall mean an imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

(h) **Grubbing** shall mean the effective removal of understory vegetation from a site.

(i) **Land Clearing** shall mean those operations where trees and vegetation are removed and which occur previous to construction or building; e.g., road right-of-way excavation, utility excavation, grubbing, and any other necessary clearing operation.

(j) **Landmark Tree** shall mean a tree of the genus and/or species and diameter listed in Section 1028.13(a), and any tree of twenty-four inches DBH or greater, which meets the health/condition criteria of Section 1028.13(b).

(k) **Person** shall mean any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind conducting operations within the City

of Southgate, including all tree removal companies and persons removing trees on behalf of others.

(l) **Remove or Removal** shall mean the act of removing a tree by digging up or cutting down, or the effective removal through damage to the tree or its root system.

(m) **Shrubs** shall mean growth under fifteen feet in height and may include vines and plants.

(n) **Transplant** shall mean the digging up of a tree from one place on a property and the planting of the same tree in another place on the same property, in accordance with City tree transplanting standards and specifications.

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

(p) **Woodlands** area shall mean either:

(1) An area of land two contiguous acres or larger which is covered by at least fifty percent tree canopy from one or more groups of trees which have a natural understory and the remainder of the area not within the tree canopy is covered by other natural vegetation; or

(2) An area of land at least one-half acre, but no more than two acres in size, which is covered by at least fifty percent tree canopy from one or more groups of trees which have a natural understory and the remainder of the area not within the tree canopy is covered by other natural vegetation. Said area must meet one or more of the following criteria:

A. The area acts as a major buffer for residential property.

B. The area is a significant entry landmark to a residential subdivision or other prominent public area which in its absence would have a significant negative impact on the area.

C. The area is an important greenbelt linkage between other natural areas for pedestrians, recreational activities and/or wildlife.

D. The area has high environmental value due to unusual topography, diversity of habitat, unique beauty, rare plant species or unusually large quality trees.

(Ord. 682. Passed 8-18-99.)

## **1028.04 AUTHORITY OF DEPARTMENT OF PUBLIC SERVICES; RULES AND REGULATIONS.**

The Department of Public Services shall have complete charge and control over the planting, cutting, trimming and removal of trees and other growth upon all public highways and places. The Department may promulgate and adopt rules and regulations for the control of same.

(Ord. 682. Passed 8-18-99.)

## **1028.05 WOODLANDS MAP.**

The City hereby incorporates into this chapter and makes a part hereof by reference an official map of woodlands areas showing the general location of woodlands areas in the City. Said map shall be updated at any time that new and substantial data for woodlands are available. In revising the woodlands map, the City shall satisfy the requirements of Act 207 of the Public Acts of 1921, as amended, relative to the amendment of zoning ordinance maps. The woodlands map shall serve as a general guide for the delineation of boundaries of woodlands areas. Field investigations to delineate the precise boundaries of woodlands areas shall be the responsibility of an applicant for a tree permit. In cases where the City needs additional information to complete a tree permit application review, the City may conduct on-site investigations of woodlands areas.

(Ord. 682. Passed 8-18-99.)

## **1028.06 TREE PERMIT REQUIRED.**

(a) It shall be a violation of this section for any person, except as otherwise provided herein, to remove, cause to be removed, transplant or destroy a tree within the City without a tree permit issued in accordance with this section.

(b) A tree permit shall be required for the following, except as otherwise exempted under Section 1028.07.

- (1) The removal, transplanting or destruction of any tree within a woodlands area.
- (2) The removal, transplanting, topping or destruction of any tree of eight inches DBH or greater outside of a woodlands area.
- (3) The removal, transplanting, topping or destruction of a landmark tree.
- (4) Land clearing or grubbing within a woodlands area.

(5) The removal, transplanting, topping or destruction of any tree located within a public right-of-way, or on public property, subject only to the exception set forth in Section 1028.07(e) or as may be determined necessary by the City. (Ord. 708. Passed 11-8-00.)

## **1028.07 EXCEPTIONS.**

Notwithstanding the requirements of Section 1028.06, the following activities are allowed without a tree permit, unless otherwise prohibited by statute or ordinance:

(a) On occupied property for which a valid certificate of occupancy has been issued within a woodlands area, the removal or transplanting of no more than ten percent of the total number of trees on the property of less than eight inches DBH per calendar year.

(b) The removal or transplanting of a pear (pyrus), apple (malus), cherry (prunus), peach (prunus) or plum (prunus) tree.

(c) The removal of dead trees where the damage resulted from an accident or non-human cause.

(d) The trimming or care of trees, or other woody vegetation, provided that the work is accomplished in accordance with standardized forestry and horticultural practices as established by the American Association of Nurserymen or the National Arborist Association.

(e) Actions made necessary by an emergency such as a tornado, windstorm, flood, freeze, dangerous and infectious insect infestation, or other man-made or natural disaster, in order to prevent injury or damage to persons or property.

(f) Tree removal in order to perform maintenance or repair of lawfully located roads, sewers, structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telecommunication, or other services, provided that such roads, sewers, structures, or facilities are not materially changed or enlarged, and provided that the work is conducted using best management practices to ensure that the woodlands areas are not adversely impaired.

Notwithstanding this provision, the owner or person in charge or control of any lot or parcel of land in the City, upon which any tree or shrub grows adjacent to any public way, shall trim, either at the property line or to a clear height of at least eight feet above the surface of such public way, all branches which overhang any portion of such public way or which obstruct or interfere with the passage of light from any street lighting system, and shall not plant or maintain any tree or shrub so close to any property line as to obstruct thereby the vision of travelers along the streets. The owner shall remove from such tree, shrub, plant or vine, all dead, decayed, unsightly, broken or dangerous limbs

and branches that overhang or are close to the public way, and when any such tree or shrub is dead, the owner shall remove the same.

(Ord. 682. Passed 8-18-99.)

## **1028.08 APPLICATION FOR TREE PERMIT.**

Applications for a tree permit shall be filed with the Department. When a site is proposed for development necessitating review and approval of a site plan, plat or any other type of permit pursuant to the City Code, said application for a tree permit shall be made at the same time as such other related application. The application for a tree permit shall consist of the following:

- (a) Three copies of the tree permit application.
- (b) A tree location survey in a form acceptable to the Department, which shall bear the following information and details:
  - (1) Minimum scale of 1"= 50'. The scale shall be the same as a related site plan.
  - (2) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, including existing and proposed utilities.
  - (3) The locations and dimensions of all setbacks and existing or proposed easements.
  - (4) All trees of eight inches DBH or greater on the project site shall be tagged in the field with identifying numbers, using noncorrosive metal tags.
  - (5) The exact locations of all existing trees, determined by actual field survey, of eight inches DBH or greater, including trees within the adjoining street right-of-way and trees twenty-five feet beyond the limits of the property lines, including adjacent properties and all trees to be affected by the development, such as trees located within areas of right-of-way improvements or off-site utility work. All such trees proposed to remain, to be relocated or to be removed, shall be so designated and the numbered trees shall be identified by size (DBH), grade at the base of each tree and crown spread to scale. Such verified information shall be provided by a registered land surveyor. The survey shall be accompanied by a separate key identifying the numbered trees by size, common name/genus and condition. This information must be provided by a registered landscape architect, certified arborist or forester, through an on-site inspection, who must verify the contents by seal or signature, whichever applies.



(6) If existing trees are to be relocated, the proposed location for such trees, together with a statement as to how such trees are to be moved, protected and/or stored during land clearance and construction and how they are to be maintained after construction.

(7) A statement showing how trees to remain are to be protected during land clearance, construction and on a permanent basis, including the proposed use of tree wells, protective barriers, tunneling or retaining walls.

(8) The number of trees to be removed which are of eight inches DBH or greater.

The requirement for a tree location survey may be waived by the Department for areas fifty feet or more outside the construction zone. If waived, a statement indicating predominant species and estimated number and size of trees in this area shall be required. The area to remain undisturbed shall be snow fenced prior to any activity.

(c) For tracts of land ten acres or larger, a tree location survey meeting the conditions of the above requirements shall be submitted with the following supplemental documentation: An aerial photograph or copy thereof, of suitable quality, 1"= 100' minimum.

(d) An on-site examination shall be made by the Department in lieu of the tree location survey under any of the following conditions:

(1) Where a permit is requested to remove or transplant trees on a lot which is zoned for single-family purposes and upon which is located an occupied one-family dwelling;

(2) Where a permit is requested in connection with the construction of a one-family dwelling on a lot which is zoned for single-family purposes and which is not located within a subdivision for which a final plat has been approved subsequent to the effective date of this chapter; or

(3) Where a permit is required to remove three or fewer trees.

(Ord. 682. Passed 8-18-99.)

## **1028.09 REVIEW OF TREE PERMIT APPLICATION.**

The City shall process a tree permit application as follows:

(a) The Department shall review the tree permit application to verify that all required information has been provided. At the request of the applicant or the

Department, an administrative meeting may be held to review the proposed application in light of the purpose and review standards of this section.

(b) Upon receipt of a complete application, the Department may conduct or authorize the completion of a field investigation to review and verify the accuracy of information received and during such review shall refer to the woodlands area map, if applicable. The receipt of a tree permit application shall constitute permission from the owner of the property to conduct such on-site investigation.

(c) If a tree permit application relates to a proposed development or activity on a site necessitating site plan review, plat approval or any other type of permit approval by the City Council, the Council shall consider said application concurrent with its review of the related site plan, plat or other permit approval. If Council approves a site plan, plat or other permit which conforms with the requirements of this section, that approval, together with any additional terms and conditions attached thereto, will be considered to have fulfilled the requirements for a tree removal permit.

(d) When a tree permit application is not related to a development or activity necessitating review and approval of a site plan, plat or other permit by the City Council, the Director shall be responsible for granting or denying the application. In the event the tree permit application is related to development on property for which administrative site plan approval is required prior to his or her decision, notice of the tree permit application shall be sent by first-class mail to all property owners adjoining the property upon which the development is proposed (including property directly across of rights-of-way and easements) at least fifteen days before the Director makes his or her decision, which notice shall indicate where and when the tree permit application may be examined and which shall further indicate that said owner(s) may file a written objection thereto with the Department.

(e) The City shall not issue a tree permit related to an administrative site plan approval approved by the Director until ten days have passed following such approval. Any person denied a tree permit by the Director or any owner of property adjoining the property upon which a development is proposed (including property directly across public rights-of-way and easements) when a tree permit related to an administrative site plan approval is approved, may appeal to the City Council. An appeal must be filed in the City Clerk's office, in writing, within ten days of the date of mailing of the decision being appealed. Timely filing of an appeal shall have the effect of suspending the issuance of a tree permit related to an administrative site plan approval pending the outcome of the appeal. The City Council, upon review, shall determine, with findings, whether or not there has been compliance with the requirements and standards of this section and, based upon its findings, it may affirm, reverse or modify the decision rendered by the Director.

(f) Whenever an application for a tree permit is granted, the City Council or the Director shall:

- (1) Attach to the granting of the tree permit any reasonable conditions considered necessary to ensure that the intent of this section will be fulfilled;
- (2) Affix a reasonable time to carry out the activities approved in the permit; and
- (3) Require the permit grantee to file with the City a cash or corporate surety bond or irrevocable bank letter of credit in an amount determined necessary to ensure compliance with tree permit conditions and this section.

(Ord. 682. Passed 8-18-99.)

### **1028.10 APPLICATIONS WHICH QUALIFY FOR A MANDATORY TREE PERMIT.**

A tree permit application shall be granted for the following:

(a) Where a permit has been requested with regard to occupied property for which a valid certificate of occupancy has been issued, which property is less than one acre in area, for the removal or transplanting of three trees of eight inches DBH or greater within a calendar year or not more than ten percent of the total number of trees of eight DBH or greater on the property, whichever is less. This provision shall not apply to landmark trees.

(b) Where a permit has been requested with regard to occupied property for which a valid certificate of occupancy has been issued, which property is one acre or more in area, for the removal or transplanting of eight trees of eight inches DBH or greater within a calendar year or not more than ten percent of the total number of trees of eight inches DBH or greater on the property, whichever is less. This provision shall not apply to landmark trees.

(Ord. 682. Passed 8-18-99.)

### **1028.11 APPLICATIONS WHICH DO NOT QUALIFY FOR A MANDATORY TREE PERMIT.**

The following standards shall govern the granting or denial of an application for a tree permit for property which does not qualify for a permit pursuant to Section 1028.09:

(a) The preservation and conservation of trees, woodlands areas, similar woody vegetation, wildlife and related natural resources and processes shall have priority over development when there are feasible and prudent location alternatives on the site for proposed buildings, structures or other site improvements.

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

(c) Diversity of tree species shall be maintained where essential to preserving a woodlands area.

(d) Where the proposed activity consists of land clearing, it shall be limited to designated street rights-of-way, drainage and utility areas, and areas necessary for the construction of buildings, structures or other site improvements.

(e) Where the proposed activity involves residential development, residential units shall, to the extent reasonably feasible, be designed and constructed to blend into the natural setting of the landscape.

(f) The proposed activity shall comply with all applicable statutes and ordinances.

(g) The proposed activity shall include necessary provisions for tree relocation or replacement in accordance with Section 1028.12.

(h) Tree removal or transplanting shall be limited to the following instances:

(1) When removal or transplanting is necessary for the construction of a building, structure or other site improvement, and the permit applicant has shown there is no feasible and prudent location alternative on-site for a proposed building, structure or other site improvement; or

(2) The tree is dead, in decline, in danger of falling, is located too close to existing buildings or structures, interferes with existing utility service or drainage, creates unsafe vision clearance or does not conform to other City ordinances or regulations.

(Ord. 682. Passed 8-18-99.)

## **1028.12 TREE PROTECTION PRIOR TO AND DURING CONSTRUCTION.**

(a) Prior to construction and/or land clearing, the applicant shall do the following:

(1) All trees for which application is being made for removal shall be so identified on-site by fluorescent orange spray paint (chalk base) or by red flagging tape prior to field inspection by the Department. Trees selected for transplanting shall be flagged with a separate distinguishing color.

(2) Construction limit fencing shall be erected which restricts access to protected areas and tree protection devices shall be installed where required over tree roots, branches and/or tree trunks. All tree protection fencing and tree protection devices shall be installed as approved by the Department.

(3) Fences and tree protection devices installed shall be maintained and all construction materials, supplies and equipment shall be kept outside of the protected areas.

(b) During construction, the applicant shall do the following:

(1) Maintain all fences and tree protection devices as approved by the Department and refrain from causing or permitting any activity within the drip line of any tree or group of trees, including, but not limited to, the storage of equipment, supplies or excavative materials; the disposal of fuels, solvents or chemicals; or causing the disturbance of any soils or vegetation within protected areas; without the prior approval of the Department.

(2) No damaging attachments, wires (other than cable wires for trees), signs or permits may be fastened to any tree protected by this section.

(c) The Department shall conduct periodic inspections of the site during land clearing and/or construction in order to insure compliance with this section.

(Ord. 682. Passed 8-18-99.)

### **1028.13 REPLACEMENT OR RELOCATION OF TREES; CITY TREE FUND.**

Whenever a tree permit allows removal of trees of eight inches DBH or greater, the permit grantee shall relocate or replace the trees, except as provided in subsection (e) below, on a one-to-one basis, and all replacement trees must measure two and one-half inches in diameter or greater, measured six inches above grade. In lieu thereof, the City and the permit grantee may agree to replacement trees of varying diameters so long as the market value of said trees would approximate the value of the replacement trees which would be required in accordance with the above formula. In addition:

(a) Replacement trees shall have shade potential and other characteristics comparable to the removed trees, and shall be State Department of Agriculture nursery grade No. 1 or better. All replacement trees, whether nursery stock or transplanted trees must be approved by the City on the project site prior to planting and must be planted in accordance with City standards for planting and transplanting including, but not limited

to, staking, mulching and watering. All nursery stock and transplanted trees shall be guaranteed for one year.

(b) The City shall approve tree relocation or replacement locations in order to provide optimum enhancement, preservation and protection of woodlands areas. To the extent feasible and desirable, trees shall be relocated or replaced on-site and within the same general area as trees removed.

(c) Where it is not feasible and desirable to relocate or replace trees on-site, relocation or replacement may be made at another approved location in the City.

(d) Where it is not feasible and desirable to relocate or replace trees on-site or at another approved location in the City, the tree permit grantee shall pay into the City Tree Fund, which fund is hereby created, an amount of money approximating the current market value of the replacement trees that would otherwise be required. The City shall use the City Tree Fund for the purpose of maintaining and preserving wooded areas, for planting and maintaining trees within the City and for expenses related to the administration and enforcement of this chapter.

(e) Replacement trees shall not be required for a tree which is removed pursuant to a tree permit granted pursuant to Section 1028.09 or for a reason described in Section 1028.11(h)(2).

(Ord. 682. Passed 8-18-99.)

**1028.14 LANDMARK TREES.**

(a) All trees within the City of twenty-four inches DBH or greater and all trees listed below by genus and/or species and minimum size DBH shall be considered landmark trees if they also meet the health/condition criteria of subsection (b) below:

<u>COMMON NAME</u>	<u>BOTANICAL NAME</u>	<u>SIZE (DBH)</u>
Arborvitae	Thuja	18"
Beech	Fagus	18"
Birch	Betula	18"*
Black Gum	Nyssa sylvatica	12"
Blue Beech	Carpinus caroliniana	8"
Cedar, Red	Juniperus virginiana	12"

Chestnut *Castanea* 10"  
Crabapple *Malus* 12"  
Dogwood *Cornus* 8"  
Douglas Fir *Pseudotsuga menziesii* 18"  
Fir *Abies* 18"  
Ginkgo *Ginkgo* 18"  
Hawthorn *Crataegus* 12"  
Hemlock *Tsuga* 18"  
Hickory *Carya* 18"  
Hornbeam *Ostrya* 8"  
Horsechestnut/Buckeye *Aesculus glabra carnea* 18"  
Kentucky Coffeetree *Gymnocladus Dioicus* 18"  
Larch/Tamarack *Larix* 12"  
London Plane/Sycamore *Platanus* 18"  
Magnolia *Magnolia* 8"  
Maple, Red *Acer rubrum* 18"  
Maple, Norway *Acer platanoides* 18"  
Pine *Pinus* 18"  
Redbud *Cercis canadensis* 8"  
Sassafras *Sassafras albidum* 15"  
Serviceberry *Amelanchier* 8"  
Spruce *Picea* 18"

Sweetgum Liquidambar styraciflua 16"

Tulip Tree Liriodendron tulipifera 18"

Walnut Juglans 20"

Wild Cherry Prunus 18"

Witch Hazel Hamamelis virginiana 8"

\* If a birch tree has multiple trunks then its total DBH shall be computed by adding the DBH in inches of each of the trunks.

(b) In order to be considered a landmark tree, in addition to the above requirements, said tree shall also have a score of sixteen or higher as determined by the Department in accordance with the following health/condition criteria:

<u>FACTOR</u>	<u>RANKING</u>		
	<u>5 OR 4</u>	<u>3 OR 2</u>	<u>1</u>
TRUNK	sound and solid missing	sections of bark hollow	extensive and
GROWTH/RATE	more than 6" twig elongation	2"- 6" twig twig elongation	less than 2"
STRUCTURE	sound several minor limbs dead	one major or limbs dead	2 or more major
INSECTS/ DISEASES	no pests present present	one pest pests present	2 or more pests present
CROWN/ DEVELOPMENT	full and balanced	full but unbalanced	unbalanced and lacking a full crown
LIFE EXPECTANCY	over 30 years	15-20 years	less than 5 years

(c) When landmark trees are permitted to be removed, in addition to compliance with the provisions of Section 1028.12, replacement trees shall be provided to a minimum of thirty percent of DBH of the tree to be removed. Replacement trees, measured in DBH or calipers, shall be provided either individually or on an accumulative basis to meet the thirty percent DBH requirement; however, if on an accumulative basis



all individual trees shall measure at least two and one-half inches in diameter. (Ord. 682. Passed 8-18-99.)

### **1028.15 FEES GENERALLY.**

Applications for a tree permit under this chapter shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the City Council. In addition, an applicant may be required to pay an additional escrow fee in an amount determined by the Department to pay for the estimated cost of any needed outside consultant(s) who may be retained by the City in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the applicant shall pay the deficiency to the City prior to the issuance of a tree permit. A denial of an application for a tree permit shall not affect the applicant's obligation to pay the escrow fee provided for in this section.

(Ord. 682. Passed 8-18-99.)

### **1028.16 FEE FOR ILLEGALLY REMOVED TREES.**

In addition to any penalty provided for in the event of a conviction for a violation of this chapter, and notwithstanding whether or not the City has commenced a civil suit for injunctive relief, any person who removes or causes any tree to be removed except in accordance with this chapter shall forfeit and pay to the City a civil fee equal to the total value of trees illegally removed or damaged, as computed from the International Society of Arboriculture shade tree value formula. The fee shall accrue to the City and, if necessary, the City may file a civil action to recover the fee. The City shall place any sum collected in the City Tree Fund. Alternatively, the City may require replacement of illegally removed or damaged trees as restitution in lieu of the fee. Replacement will be on an inch-to-inch basis computed by adding the total diameter measured at DBH in inches of the illegally removed or damaged trees. The City may use other reasonable means to estimate the tree loss if destruction of the illegally removed or damaged trees prevents exact measurement. The City may also require a combination of fee payment and tree replacement.

Additionally, in the event of an illegally removed tree from a public right-of-way, an additional fee of five hundred dollars (\$500.00) shall be assessed to reimburse the City for its costs in the administration and enforcement of this section, and for labor costs associated with remediation; seven hundred fifty dollars (\$750.00) for a second offense by a person or entity within one year of a first offense; and one thousand dollars (\$1,000) for each additional tree removed.

(Ord. 708. Passed 11-8-00.)

### **1028.17 NONCOMPLIANCE WITH CHAPTER; NOTICE; REMEDIES OF CITY.**

If the owner or occupant or any premises falls to perform any duty required of him or her by this chapter, the Department of Public Services may serve notice upon such owner or occupant, directing him or her to cause such work to be done. Upon his or her failure to comply with the notice, the City may enter upon the premises and perform the work and the cost shall be served and charged pursuant to Sections 194 and 157, respectively, of the City Charter. Such sections of the Charter shall be construed as supplementary to this chapter and shall constitute a part of this chapter with the same effect as if those sections were fully written and contained in this chapter.

(Ord. 682. Passed 8-18-99.)

### **1028.18 INJUNCTION.**

Any activity conducted 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.

(Ord. 682. Passed 8-18-99.)

### **1028.19 STOP-WORK ORDER.**

The City may also issue a stop-work order or withhold issuance of a certificate of occupancy, permits or inspections until the provisions of this chapter, including any conditions attached to a tree permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this section.

(Ord. 682. Passed 8-18-99.)

### **1028.20 APPROVED SITE PLANS AND PLATS.**

This chapter shall not apply to a site plan or plat which has received final approval prior to the effective date of this chapter so long as the site plan or plat remains in effect and in good standing pursuant to this chapter.

(Ord. 682. Passed 8-18-99.)

### **1028.21 VARIANCE FOR HARDSHIP.**

The City Council may grant a variance from the provisions of this chapter when undue hardship may result from strict compliance herewith.

(a) In granting any variance, the City Council shall prescribe conditions that it deems necessary or desirable for the public interest and in furtherance of the intent of this chapter.

(b) No variance shall be granted unless the City Council finds:

(1) There are special circumstances or conditions affecting said property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his or her land;

(2) That the variance is necessary for the preservation and enjoyment of a substantial property right by the applicant; or

(3) That the variance will further the objectives and policies of this chapter of the City Code.

(Ord. 682. Passed 8-18-99.)

## **1028.22 HEIGHT OF SHRUBS ON CORNER LOTS.**

All shrubs and bushes located on the triangle formed by the two right-of-way lines at the intersection of two streets, and extending for a distance of twenty feet each way from the intersection of the right-of-way lines on any corner lot in the City, shall not be permitted to grow to a height of more than thirty inches from the top of the curb at street level, in order that the view of the driver of a vehicle approaching a street intersection is not obstructed. Trees may be planted and maintained on private property in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight feet above the roadway surface. (Ord. 682. Passed 8-18-99.)

## **1028.23 DISEASED TREES.**

(a) Any ash tree or state-designated tree with the city, which is infected with Emerald Ash Borer Disease, is hereby declared a public nuisance.

(b) The City shall, pursuant to Section 194 of the Charter, which provides that it shall have the power to prohibit the maintenance of diseased trees and shrubbery on private premises, shall have the right to enter premises for the purpose of inspecting and determining whether any ash tree located on private property is or may be infected, with the Emerald Ash Borer Disease, and if any tree is found to be so infected, to place a distinguishing mark thereon.

(c) Every person owning any ash tree located within the City limits, and on a portion of private property, which is not a public easement for the right-of-way, shall remove such tree at his or her expense, within 20 days after notice by the Department of Public Services, that such tree has been infected with Emerald Ash Borer Disease. The City, may, at its option, either through use of its own equipment and personnel, or through arrangements with a private contractor, offer tree removal services with respect to such infected ash trees; if such service is available. Any owner shall be deemed to have complied with the requirements of these sections if, after 20 days after the notice, the owner has authorized the City in writing, to remove such infected ash tree at the owners cost, expense and responsibility.

(d) In the event the Department of Public Services determines, with the concurrence of the Mayor, that immediate action is required to abate such public nuisance, the City may, with 3 days notice, and without allowing the 20 days to take such action, remove such infected ash tree. The cost of such emergency abatement may be charged against the owner or against the premises.

(e) No person shall store, sell, deliver or bring into the City, wood from any ash tree to be used as firewood or for any other purpose. Homeowners, contractors, and/or the City will use regional drop sites designated by the State of Michigan for the disposal of the trees.

(f) The City may, subject to the approval of the City Council, promulgate additional rules and regulations pertaining to the removal, care, maintenance or protection of trees which are, or may become infected with the disease as may be necessary to protect the property, health or safety of the public.

(g) Removal of trees pursuant to this Section shall be exempt the tree permit requirements Section 1028.06 and the tree replacement requirements of Section 1028.13 of the City Code.

(Ord. 776. Passed 5-7-03.)

## **1028.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)