

CHAPTER 1122. TREE PRESERVATION REGULATIONS¹

1122.01. Purposes.

This chapter seeks to preserve and enhance tree canopy to protect the public health, safety, and welfare of the City, recognizing the long-term health and safety, property value, economic, environmental, and community benefits provided by tree canopy specifically and tree preservation generally.

The benefits of tree canopy arise specifically from the following characteristics:

- (a) Conservation of energy;
- (b) Improved air quality;
- (c) Reduction of noise pollution and light glare;
- (d) Enhancement of habitat for birds and other desirable wildlife;
- (e) Improvement of soil stability and erosion control;
- (f) Increase of stormwater retention and runoff control;
- (g) Increase of property values;
- (h) Mitigation of heat island effects;
- (i) Provision of visual screening and windbreaks;
- (j) Enhancing the aesthetic character of the community; and
- (k) Contributing to public health;
- (l) Carbon sequestration.

These and other public benefits of tree canopy coverage cannot be realized on public property alone. This chapter recognizes that to preserve and enhance the public benefits of the tree canopy stated above, it is necessary to provide for shared responsibility among the City and private parties that is proportionate to their impact on the City's tree canopy.

(Ord. 23-75. Passed 12-11-23)

1122.02. Applicability.

- (a) The requirements of this chapter apply to:

¹Ord. 23-75, § 1, adopted December 11, 2023, repealed the former Chapter 1122, §§ 1122.01—1122.11, and enacted a new Chapter 1122 as set out herein. The former Chapter 1122 pertained to similar subject matter and derived from Ord. 02-55. Passed 5-13-02; Ord. 02-104. Passed 8-12-02; Ord. 04-92. Passed 6-14-04; Ord. 13-60. Passed 10-14-13; Ord. 14-126. Passed 12-22-14; Ord. 17-16. Passed 5-8-2017.

Cross reference(s)—Injury to growing things - see GEN. OFF. 541.06; Trees and shrubs - see S.U. & P.S. Ch. 907

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- (1) All real property in the City except as specifically exempted herein;
 - (2) All real property annexed to the City, where trees have been removed from such property within one year prior to its submittal of a petition to annex to the City; and
 - (3) A. Any activity that requires the issuance of a development permit involving site disturbance for any non-residential, multi-family residential, or mixed-use; or
B. Any activity that requires the issuance of a development permit involving site disturbance for any one- or two-family residential use, where such site disturbance is one-(1) acre or more; or
C. Any activity that requires the issuance of a development permit involving site disturbance and that is part of a larger common plan of development or sale.
- (b) The requirements of this chapter do not apply to:
- (1) Routine maintenance of existing trees, including pruning done in a manner consistent with established arboricultural standards; or
 - (2) The removal of dead, severely damaged, or diseased trees that have been diagnosed and, if applicable, determined by a certified arborist to be beyond treatment or recovery, the burden of proof being upon the person removing the tree; or
 - (3) Any tree nursery, silvicultural activity, or agricultural activity, defined as "agriculture" by the Ohio Revised Code and in an agricultural zoning district of the City; or
 - (4) The removal of trees in a utility or road right-of-way, provided that such activities shall be done to minimize loss of tree cover; or
 - (5) Removal of trees identified as invasive on the list maintained by State Department of Agriculture at Ohio Administrative Code 901:5-30-01 or successor thereof.

(Ord. 23-75. Passed 12-11-23)

1122.03. Administration.

- (a) This chapter shall be administered by the City Manager, through the City's Planning and Community Development Department and its Director ("the Director"), and such other personnel as determined by the City Manager. The assignment of administrative responsibility of this chapter to the Director shall not be construed as prohibiting the Director from soliciting the assistance and expertise of other City officials, including but not limited to the Department of Parks and Recreation, or other subject matter experts.
- (b) A party seeking to develop real property to which this chapter applies shall be required to submit a tree canopy management plan to the Director prior to commencing site disturbance activities. The tree canopy management plan shall be prepared by an arborist or landscape architect. The tree canopy management plan shall constitute an application for tree removal, and approval of said plan shall constitute a permit to remove trees in accordance with said plan. The tree canopy management plan shall include:
 - (1) A map, drawn to scale, of the site and immediate adjacent property with existing tree canopy delineation and existing canopy tree groupings (general areas of trees of similar character), including such groupings on adjacent properties and within fifty (50) feet of the property line, and an accompanying table of existing tree species on the site, with general assessment of the typical age, size, health, structural stability and risk assessment, and construction tolerance thereof. Stands of trees for which no alteration or impact is proposed, need not be documented by a tree survey but must include a qualitative statement of the tree species and condition that can be verified in the field. The delineation of existing tree canopy coverage may be documented by survey or by using current aerial

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- photographs available through the County's Geographic Information Systems mapping or other source approved by the Director.
- (2) A map or maps, drawn to scale, of the proposed development layout, which shall include:
 - A. Footprints of proposed buildings, other structures, and pavement areas;
 - B. Limits of land disturbance to occur in association with the development;
 - C. Property lines;
 - D. Proposed new landscape and tree planting areas;
 - E. Delineation of proposed tree canopy cover, at the time of completion of the site development, with an accompanying table of planned composition of the proposed tree canopy cover, and providing that no more than thirty percent (30%) of newly planted trees on site may be represented by any one tree family, twenty percent (20%) in any one tree genus, and ten percent (10%) in any one species;
 - F. Delineation of proposed tree canopy cover upon occurrence of mature canopy size as indicated by tree nursery estimates for proposed and existing tree cultivars, with a table for proposed tree species or reference to materials concerning mature canopy size for various cultivars as maintained by the Department of Parks and Recreation;
 - (3) A narrative stating plans for preservation of existing tree canopy cover as it relates to the following priority areas:
 - A. Preservation of rural viewsheds for adjacent property owners and motorists on adjacent roads;
 - B. Preservation of contributing canopy tree groupings that cross property lines;
 - C. Preservation of trees adjacent to watercourses;
 - D. Preservation of trees in locations where, due to grade or soil structure, the removal of trees would have greater tendency for negative impact to soil stability and erosion; and
 - E. Preservation of trees and tree groupings of sufficient size and configuration to provide habitat, for wildlife, including but not limited to wildlife corridors.
 - (4) A description of site soil and hydrology characteristics, and implications for development, tree tolerance, and survival.
 - (5) A narrative description of the overall strategy for tree canopy provisions on the site, including proposed tree protection strategy during construction.
 - (6) Such application review fee as is established from time-to-time by Council.
 - (7) Such additional information as determined by the Director to be advisable for the efficient review of tree canopy management plans and the administration of this chapter.
- (c) The Director shall cause the tree canopy management plan to be reviewed, and may inquire of the party submitting said plan for additional information. The Director may require an onsite conference with the Director or the Director's designee(s) to evaluate the information provided in the submitted tree canopy management plan. The Director, following review, may approve; approve with conditions; or disapprove the tree canopy management plan.
 - (d) The Director shall send the reviewed tree canopy management plan to Shade Tree Commission concurrently with the development review process detailed in Chapter 1105.
 - (e) Conformance in all respects with an approved tree canopy management plan, and any conditions of approval thereof, shall be required prior to issuance of a certificate of zoning approval or final plat approval.

(Ord. 23-75. Passed 12-11-23)

1122.04. Target canopy and minimum canopy provisions.

- (a) The City establishes the target tree canopy coverage for the City as thirty percent (30%). Tree canopy coverage shall mean the total area of the City covered by tree canopy, as determined by the Director of Parks and Recreation, divided by the total area of the City and multiplied by one hundred. The Director of Parks and Recreation shall calculate the total tree canopy coverage of the City not less than every five (5) years after adoption of this chapter.
- (b) Following calculation of the City's tree canopy coverage as set forth in division (a) of this Section, the Director of Parks and Recreation shall provide such calculation to the Shade Tree Commission, along with a report and recommendation of whether to revise either the target tree canopy coverage or the minimum tree canopy coverage set forth herein. The Shade Tree Commission shall review the report and recommendation and may either adopt the report and recommendation for adoption by Council or may adopt its own recommendation for action by Council.
- (c) Tree canopy coverage for a site shall mean the total area of the site covered by tree canopy, as determined by the arborist or landscape architect who prepared the tree canopy management plan, divided by the adjusted total area of the site and multiplied by one hundred. The adjusted total area of a site shall be equal to the total area of the site that is subject of the development application, minus the area of any right of way required to be dedicated pursuant to the City's thoroughfare plan and any cleared stormwater detention or retention areas, as required by the City Engineer.
 - (1) For sites in an industrial district, the minimum tree canopy coverage shall be the greater of five percent (5%), or twenty-five percent (25%) of the tree canopy coverage for the site as measured prior to development.
 - (2) For sites in other districts, the minimum tree canopy coverage shall be thirty-five percent (35%).
- (d) All development activities subject to this chapter shall be required, as projected for the site based on the mature canopy size as indicated by tree nursery estimates for the tree cultivars existing or proposed for the site, to meet or exceed the minimum tree canopy coverage for the development site. The minimum tree canopy can be met with existing trees and newly planted trees, provided however that existing trees shall comprise at least one-third of required canopy coverage unless the pre-development existing canopy coverage is insufficient to meet this threshold, in which case existing trees shall comprise the greatest percentage of minimum tree canopy practicable and as approved by the Director in a tree canopy management plan.

(Ord. 23-75. Passed 12-11-23)

1122.05. Payment in lieu of minimum tree canopy.

- (a) It is acknowledged that it may be infeasible, due to site conditions, arboricultural, engineering, or other environmental factors, for the minimum tree canopy to be provided on a given site. In such circumstances, and as approved by the Director in a tree canopy management plan, a party may submit to the City a fee-in-lieu of providing the minimum tree canopy on the development site.
- (b) The fee-in-lieu of minimum tree canopy shall be calculated on the basis of \$1.20 per square foot or part thereof that is in deficit of the minimum tree canopy coverage. The fee shall be estimated in the tree canopy management plan and confirmed after completion of construction and prior to issuance of a certificate of zoning compliance or final plat approval. The Shade Tree Commission shall review this fee and make a

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recommendation to increase, decrease, or maintain at the same level, on the same schedule as the Shade Tree Commission's of target and minimum tree canopy provisions.

- (c) The fee-in-lieu shall be deposited in the City's tree fund, for uses as permitted by said fund, which shall include planting of trees on public property or publicly held easements, and expenses of maintenance, equipment, and limited administrative costs relative to public trees.

(Ord. 23-75. Passed 12-11-23)

1122.06. Planting and maintenance requirements.

- (a) All newly planted trees shall be of the variet(ies) approved in the tree canopy management plan and, if applicable, an approved landscape plan. All newly planted trees shall be a minimum diameter at breast height of one and three-quarter inches (1.75") for deciduous cultivars or six (6) feet tall for evergreen cultivars.
- (b) Replacement trees that may reach a height of thirty (30) feet shall not be planted within twenty (20) feet of an overhead power line.
- (c) Trees shall be planted an adequate distance from access drives and intersections so that, at full maturity, such planting shall comply with Section 1149.06 to ensure the unobstructed visibility of motorists and pedestrians.
- (d) The developer shall be required to maintain all newly-planted trees for two (2) years after the trees are planted and to replace any tree that dies within such two-year guarantee period, according to the following:
 - (1) Upon completion of the tree planting, the landscape contractor shall contact the Director or the Director's designee to initiate the guarantee period.
 - (2) The guarantee period shall begin after the approval of the Director (or designee).
 - (3) A final inspection shall be made at the end of the two-year guarantee period. All trees not exhibiting a healthy, vigorous growing condition, as determined by the City's inspection, shall be replaced at the expense of the developer or builder.
 - A. The developer shall notify the Director (or designee) within thirty (30) days of the end of the guarantee period to schedule the final inspection.
 - B. If the City determines that replacement of a tree is required, such replacement shall occur within thirty (30) days of the date the City's inspection report is submitted to the developer, unless an extension is granted by the Director (or designee) for good cause shown by the developer. The two-year guarantee period shall begin anew for each replacement tree.
- (e) Preserved or replacement trees shall not subsequently be removed from a site unless approved pursuant to this chapter, unless otherwise exempt under Section 1122.02.
- (f) The City will require the original owner of any property on which trees have been preserved or replaced according to the requirements of this chapter to add a restrictive covenant or easement (or other mechanism as required by the Director) to the deed or plat that shall inform subsequent purchasers, lessees or occupants of the site that trees shall not subsequently be removed from a site except when approved pursuant to this chapter.

(Ord. 23-75. Passed 12-11-23)

1122.07. Variance and appeal.

Applications for variance from the provisions of this chapter, or appeal from a determination of the Director, shall be heard by the City's Board of Zoning Appeals and in accordance with the procedures set forth in Chapter 1128.

(Ord. 23-75. Passed 12-11-23)

1122.08. Penalties and enforcement.

(a) Any person who violates any section of this regulation shall be guilty of a misdemeanor of the fourth degree. Each day of continuing violation shall constitute a separate offense.

(b) The imposition of any penalties provided herein shall not preclude the City from initiating an action to enjoin further activities in violation of this chapter or to restrain, correct, or abate a violation of this chapter.

(Ord. 23-75. Passed 12-11-23)