

AN ORDINANCE PROVIDING FOR THE MANAGEMENT, PROTECTION AND CARE OF SIGNIFICANT TREES AND OTHER VEGETATIVE GROWTH IN THE CITY OF OAK PARK HEIGHTS AND THE PRESERVATION OF TREES IN LAND DEVELOPMENT.

THE CITY COUNCIL FOR THE CITY OF OAK PARK HEIGHTS DOES HEREBY ORDAIN:

1307.010 Purpose.
The City of Oak Park Heights finds that it is in the best interests of the community to protect, preserve and enhance the natural environment by encouraging a resourceful and prudent approach to the development and alteration of wooded areas. The City also finds that it is in the best interests of the community to require licensing of commercial arborists. It is the intent of this ordinance to protect the community's existing tree resource by preservation and protection of established trees, by promoting proper tree maintenance practices and by requiring the replacement of trees which are damaged or removed in the course of private residential or commercial development or construction activities. The City recognizes that trees and other vegetation help to stabilize soils, reduce storm water runoff, aid in the removal of carbon dioxide and the production of oxygen, provide a buffer and screen against both noise pollution and objectionable views, provide wildlife habitat, protect and increase property values, conserve and enhance the City's physical and aesthetic environment, and enhance the quality of life of the City's residents. Therefore, this ordinance is designed to minimize tree damage and loss, and mitigate tree removal resulting from development in areas where significant trees or tree cover occur within the City.

1307.020 Applicability.
This ordinance shall apply to parcels of land, one acre or larger, containing at least five significant trees. It shall also apply to parcels containing smaller native woody understory vegetation which covers an area of at least 10,000 sq. ft., especially when such an area is contiguous with other natural areas and serves as a wildlife corridor, or when such an area is a buffer to wetland and riparian areas, or provides a separation between land uses.

This section shall apply to parcels being developed within the City of Oak Park Heights and apply to mining or other land alteration, expansion of commercial, industrial or institutional building or impervious surfaces, or any other project that would require a grading permit from the city. This ordinance shall not apply to public improvement projects consisting of street, public utility, parks, playgrounds or similar projects initiated and constructed by the City.

1307.030 Definitions.
(a) dbh : Diameter at breast height - diameter of a tree measured at a point approximately 54 inches above the ground.

(b) significant tree: A healthy deciduous tree measuring at least 8 inches dbh, or a healthy coniferous tree at least 10 feet in height. For slower-growing or smaller stature tree species, healthy specimens would be considered significant at 4 inches dbh for ironwood, bur oak or bicolor (swamp white) oak, and two inches dbh for pagoda dogwood or serviceberry. Deciduous softwood species such as cottonwood and silver maple would be considered significant at a size of 12 inches dbh when growing within a floodplain or other riparian area, and significant at a size of 20 inches dbh when growing on other sites. Boxelder, buckthorn (*Rhamnus cathartica* or *R. frangula*) and Siberian elm would not be considered significant trees at any size.

(c) native woody understory vegetation: shrubs and small trees which are components of natural (unplanted) woodland and brushland areas in Minnesota and which provide important benefits in terms of wildlife habitat, prevention of soil erosion and slowing of runoff.

(d) caliper inches: The diameter of a tree measured at six inches above the ground (usually used for trees whose trunks are less than 4 inches in diameter)

1307.040 License Required for Commercial Tree Pruning, Chemical Treatment or Removal

(a) License application and fee. It shall be unlawful for any person to conduct as a business the cutting, trimming, pruning, removal, spraying or otherwise treating of trees in the City without first having secured a license.

1. Application for said license shall be made at Oak Park Heights City Hall on a form which has been approved by the City.
2. The annual fee for such a license shall be set by the City and said fee will be reviewed annually and specified by resolution.
3. All licenses issued shall expire on the 31st day of December following the date of issue.

(b) Proof of Insurance. All applicants for the license must file with the City of Oak Park Heights proof of a public liability insurance policy covering all operations of the applicant hereunder for the sum of at least three hundred thousand dollars (\$300,000.00) combined single limit coverage. If such insurance is canceled and the licensee fails to replace the same with another policy, which conforms to the provisions of this section, the license shall be automatically suspended until the liability insurance is replaced.

(c) Chemical Treatment Requirements. Applicants who propose to use chemical substances in any activity related to treatment or disease control of trees shall file with the City of Oak Park Heights proof that the applicant administering such treatment has been certified by the State Dept. of Agriculture as a “Commercial Pesticide Applicator” for the current year of operation.

(d) Revocation of license. Failure to comply with any part of the tree work license will result in the revocation of the license by the City Council, following a public hearing. Written notice of said public hearing shall be mailed at least ten (10) days prior to said hearing to the current holder of the license. Such notice should outline the violation(s) considered by the City to be grounds for revocation and inform the current holder of the license of the opportunity to be heard at such public hearing.

(e) Penalty for Doing Commercial Tree Work without a License. Violation of the terms and provisions of this ordinance shall constitute a misdemeanor punishable by ninety (90) days in jail and up to a \$700.00 fine or any combination of the two.

1307.050.

Tree Protection

(a) Tree Protection Methods

1. All residential and commercial development of land within the City of Oak Park Heights shall adhere to the tree protection standards of the City. The tree protection standards of the City shall be those as are adopted by resolution of the City Council from time to time.

(b) Tree Protection Plan

1. As part of any application for subdivision, planned unit development or other development of residential or commercial property, a tree protection plan shall be submitted to and reviewed by the Municipal Arborist.

2. The tree protection plan shall be submitted with preliminary subdivision or development plans and incorporated as part of a grading plan or as part of a landscape plan, as required by the type of project. The plan must be certified by a forester, landscape architect, or land surveyor retained by the applicant and approved by the City. All costs associated with the preparation of the tree protection plan will be borne by the applicant.

3. The tree protection plan shall be reviewed by the Municipal Arborist to assess the best possible layout to preserve significant trees and areas of native woody vegetation, and to enhance the efforts to minimize damage to the same. The applicant shall meet with the Municipal Arborist and Community Development Director to discuss tree preservation on the site prior to submission of the development application or prior to application for the grading permit, whichever is sooner.

4. The tree protection plan shall include the following information:
 - a. the name(s), telephone number(s) and address(es) of the applicant.
 - b. location of all buildings, structures, or impervious surfaces situated upon or contemplated to be built upon the land.
 - c. delineation of all areas to be graded and the limits of land disturbance.
 - d. size, species and location of all existing significant trees, and delineation of the canopy cover of areas of native woody vegetation greater than 10,000 square feet in size. The data on the significant trees should also be listed in tabular form on the plan or included as an attachment.
 - e. measures to be taken to protect significant trees, and large areas of native woody vegetation.
 - f. signature of the person(s) preparing the plan, their certification, and employer or firm, including address and phone number.

1307.060. Tree Removal

(a) The City recognizes that a certain amount of tree removal is an inevitable consequence of the development process. It is expected, however, that driveways, parking lots, buildings, and other parts of the private development will be situated in such a way as to maximize preservation of significant trees and minimize damage to natural areas.

(b) In the enforcement of this ordinance, the City may give preference to the preservation of those trees considered to be of higher quality or value because of their size, species, location, and/or condition.

(c) No removal of trees or areas of smaller native woody vegetation larger than 10,000 sq. ft. shall be allowed on parcels covered by this ordinance, until the site plan and tree protection plan for the project have been approved by the Municipal Arborist and the Community Development Director .

1307.070 Tree Replacement Requirements.

1. The applicant shall be required to replace significant live trees lost or reasonably anticipated to be lost as a result of grading, or building upon, the parcel as determined in accordance with the following formula:

A = Total Diameter Inches of Significant Trees Lost as a Result
of the Land Alteration

B = Total Diameter Inches of Significant Trees Situated on the Land

C = Tree Replacement Constant (1.33)

D = Replacement Trees (Number of Caliper Inches)

$[(A/B) \times C] \times A = D$

2. Credit for Tree Preservation - If 50% or more of the existing significant trees are to remain on the parcel undisturbed during and after the course of development, 10% less caliper inches of replacement trees will be required.

3. Woodland Type Factors - For projects which remove more than 1500 diameter inches of significant trees, the tree replacement requirement will be modified by multiplying the caliper inches of replacement trees by the following woodland type factors: oak (primarily oak species (100%), mixed hardwood (primarily native hardwood species other than oak (80%), conifer (primarily evergreens, native or introduced (65%), softwood deciduous (cottonwood, aspen, silver maple (50%).

4. Where trees are less than significant size, if areas of native woody vegetation greater than 10,000 sq. ft. in size are damaged or destroyed, the applicant shall be required to install 1 replacement tree for every 1,000 sq. ft. of native woody vegetation damaged or destroyed.

5. If the land which is being developed contains trees grown as a crop, i.e. a nursery or tree farm, all efforts shall be made to move trees which will be good landscape specimens to other portions of the property or to other properties within the community. Tree replacement caliper inches will only be required for those crop trees which are of significant size and are destroyed in the development process. Replacement inches in this situation will be calculated by taking the total diameter inches of significant crop trees destroyed and multiplying this number by the woodland type factors above and also by the following condition factors: trees. Trees relocated to other areas of the development property may also be counted as part of the caliper inches of poor (20%), fair (50%), good (80%).

6. The requirement for replacement trees may in part be satisfied by trees which are required to be planted in accordance with any other provision of the Code. New trees included in a landscape plan submitted for the development may be counted as part of the caliper inches of replacement trees. Trees existing on the property which are relocated to other properties in the community will be credited towards replacement at half of their caliper inch total.

7. Location of Replacement Trees. Replacement trees shall be planted in one or more of the following areas on the land:

- a. restoration areas including steep slopes
- b. outlots or common areas

- c. buffer zones between different land uses and/or activities
- d. project entrance areas
- e. any other part of the land except any part thereof dedicated or conveyed to the City, unless the City consents thereto
- f. on other parcels of land within the city, public or private, subject to the approval of the City of Oak Park Heights and the property owner.

8. Replacement Trees

a. Species. Replacement trees shall be species which are included on the approved tree list of the City of Oak Park Heights and shall include species indigenous to the area, and species similar to those lost or removed. Not more than 20% of the replacement trees shall be of the same species.

b. Size. A minimum of 2.0 caliper inches for deciduous trees (except bur oak, bicolor oak, ironwood, and ornamental trees, which may be 1.25 caliper inches), and a minimum of 6 feet in height for coniferous trees.

c. Warranty Requirements - Any replacement tree which is not alive or healthy, as determined by the Municipal Arborist, within two growing seasons after the date of the planting of the last replacement tree, shall be removed by the Applicant and replaced with a new, healthy tree meeting the same species and size requirements.

d. Planting Standards - Planting specifications for replacement trees shall adhere to the tree and shrub planting standards of the City of Oak Park Heights.

The tree and shrub planting standards of the City shall be those as are adopted by resolution of the City Council from time to time.

9. Tree Replacement Plan Required

a. Applicant shall provide a plan showing the size, species, and location of all replacement trees proposed to be planted on the property in accordance with the tree replacement requirements.

b. No planting of trees shall be allowed on parcels covered by this ordinance, until the tree replacement plan for the project has been approved by the Municipal Arborist and the Community Development Director.

10. Payment in Lieu of Tree Replacement.

In development of lands under this ordinance should the applicant determine that there is insufficient opportunity within the development to replace trees lost or anticipated to be lost as a result of the development the applicant may request of the city council permission to pay an amount into the city tree fund an amount equal to the value of the required replacement tree. Such values(s) shall be determined by the City and will include a value of replacement calculated on a per caliper inch of trees to be compensated. The value per caliper inch shall be established by the City Council. The city tree fund, upon receipt of such funds as may be authorized by the council under the provisions of this ordinance, shall act as a dedicated fund to provide for the care and replacement of shade trees within the City of Oak Park Heights.

1307.080 . Inspection and Enforcement

All site inspections shall be carried out by the Municipal Arborist under the following criteria:

1. Site inspection shall occur prior to issuance of grading permit to confirm that a tree inventory and tree protection measures are in place.
2. An additional site inspection shall be performed after completion of final grading to evaluate any tree damage or removal caused by the project.
3. On wooded lots –
 - (a) Site inspection shall occur prior to issuance of a building permit to confirm that tree protection measures are in place
 - (b) An additional site inspection shall occur prior to issuance of Certificate of Occupancy to evaluate if any additional tree damage or removal has occurred.
4. For any additional tree damage discovered during site inspections resulting in tree mortality and/or removal, there shall be restitution made to the City by paying \$100.00 per diameter inch of significant trees destroyed.

1307.090 Agreement to Replace Trees - Security

A. Prior to the issuance of any subdivision, planned unit development or grading permit, the applicant shall enter into a written agreement with the City of Oak Park Heights in a form to be approved by the City Attorney and City Administrator which agreement shall include provisions providing for the following:

1. The Developer shall undertake to comply with the provisions and conditions imposed by this Section and in connection with any such approval or issuance of a permit.
2. The Developer shall indemnify the City against any loss, cost or expense, including an amount for reasonable attorneys' fees incurred in enforcing the terms of such agreement.
3. The Developer shall provide security for the performance of its obligations pursuant to such agreement. The security may consist of a bond, cash or escrow deposit, all in such form and substance as shall be approved by the City Attorney. The amount of security shall be 150% of the estimated cost to furnish and plant the replacement trees. The estimated cost shall be at least as much as the reasonable amount charged by nurseries for the furnishing and planting of the replacement trees and shall be subject to approval by the Municipal Arborist.
3. The security shall be maintained at least for two growing seasons after the date the last replacement tree has been planted. Upon a showing by the Developer and inspection by the Municipal Arborist, that portion of the security may be released by the City equal to 150% of the estimated cost of the replacement trees which are alive and healthy at the end of the performance period. Any portion of the security not entitled to be released at the end of the performance period shall be maintained and shall secure the Developer's obligation to remove and replant replacement trees which are not alive or are unhealthy, and to replant missing trees. Upon completion of the replanting of such trees, the entire security may be released. Notwithstanding the foregoing, no portion of the security shall be released while there are unsatisfied Developer's obligations to indemnify the City for any expenses incurred in enforcing the terms of the agreement provided for in this subsection.

Sections 1307.020 and 1307.070.10 amended by the City Council on November 28, 2017.