

03/09/2012

ORDINANCE NO. _____

AN ORDINANCE TO AMEND SECTION 84-11 OF CHAPTER 84, PROPERTY MAINTENANCE CODE, SECTION 94-35 AND ARTICLE III OF CHAPTER 94, AND ARTICLE II OF CHAPTER 106, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO MODIFY REGULATIONS CONCERNING TREE PRUNING AND MAINTENANCE BY PROPERTY OWNERS IN THE CITY, REPEAL CONFLICTING ORDINANCES AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Section 84-11 of Chapter 84 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

Sec. 84-11. Public sidewalks.

(a) *Maintenance by property owner.* The adjoining property owner or occupant of the lot or premises shall maintain the sidewalk adjoining such property. Such sidewalk shall be kept as follows:

- (1) Free from defects of every kind and nature and maintained in a condition of good repair.
- (2) Free from any deposits of debris, rubbish, or other objects that might or could be hazardous to persons using the sidewalk.
- (3) Free and clear from accumulations of snow, sleet, ice, and water as follows:
 - a. When any snow or ice shall cease to fall or form during the daylight hours, such snow or ice shall be cleared from the sidewalk within 48 hours after such cessation.
 - b. When any snow or ice shall cease to fall or form during the nighttime, such snow or ice shall be cleared from the sidewalk within 48 hours after sunrise.
- (4) Free from obstructions encroaching from adjoining or adjacent property, including but not limited to overhanging tree limbs, bushes and the like. The minimum clearances that shall be maintained free from such obstructions shall be eight feet vertical and ~~three feet~~one foot horizontal.
- (5) Free from obstructions from adjoining or adjacent property interfering with site distance lines, at driveways and other sidewalks intersecting the sidewalk. A clear and unobstructed site triangle must be created using a base leg of 15 feet from the site obstruction to any sidewalk or driveways or sidewalks intersecting such sidewalk.

(b) *Repair of damage by developer.* Sidewalks provided by a developer that are damaged prior to occupancy shall be repaired by the developer prior to the date of final

occupancy, or if repairs cannot be made, a cash escrow in an amount equal to 150 percent of the projected cost for such repairs shall be posted with the city.

(c) *Repair or reconstruction by property owner.*

(1) *Written notice.* Upon determination by the department of public service that any sidewalk or portion thereof is in need of repair or elimination from encroachment, the department shall serve a written notice upon the adjoining property owner to the portion of such sidewalk requiring repair or elimination of encroachment by first class mail to the owner in accordance with the following:

a. *Determination of property owners.* Adjoining property owners shall be determined from the current city tax roll.

b. *Proration of cost among adjoining owners.* When a sidewalk requiring repair or reconstruction is contiguous to more than one lot or parcel, costs of such repair or reconstruction shall be prorated between adjoining property owners on the basis of front footage repaired.

i. The failure of one adjoining property owner to undertake such repair where such sidewalk abuts more than a single parcel shall not excuse the remaining adjoining property owner from the duties established in this section.

ii. Such notice shall require that the adjoining property owner shall perform such repairs ~~or elimination of encroachments~~ within 45 days of the date of such notice; or the elimination of the encroachment within 14 days of the date of such notice.

(2) *Failure to comply.* Failure to comply shall subject the owner to the following:

a. *Correction by city; owner billed cost.* If the adjoining property owner fails to repair the sidewalk ~~or remove the encroachment~~ within 45 days of such notice, or remove the encroachment within 14 days of such notice, the city may perform the repair or remove the encroachment and bill such adjoining property owner the total cost thereof, together with an additional fee of ~~15~~30 percent for engineering supervision and general administration expense.

b. *Lien against property.* If payment is not received by the city within 60 days after such billing, such amount shall become a lien on the property and shall be assessed and collected in the same manner as other taxes and assessments under the Michigan General Property Tax Act, Public Act No. 206 of 1893 (MCL 211.1 et seq.), as amended.

Section 2. Section 94-35 of Chapter 94 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

Sec. 94-35. Property adjacent to street.

(a) *Maintenance of trees, shrubs, etc.* It shall be the duty of each owner of property adjacent to a street to maintain that property, including the adjacent public right-of-way

located between the adjacent property and the inside edge of the pathway or sidewalk, so that trees, shrubs and other vegetation do not obstruct the passage of vehicles, bicycles or pedestrians on streets, pathways and sidewalks. **Streets, pathways, and sidewalks shall be maintained in order to achieve a clear height of fourteen (14) feet over the travelled portion of the street and three (3) feet from the edge of the street, ten (10) feet over pathways, and eight (8) feet over sidewalks. A clearance of at least one (1) foot off the edge of the pathway or sidewalk shall be maintained.**

(b) *Compliance after notice.*

(1) If a property owner fails to maintain the property as required by this section after written notice by the city requesting work to be done, the city may do the work necessary to bring the property into compliance and charge the property owner for the reasonable cost of the work, with an additional fee of 30% for supervision and administrative expenses. If the charges are not paid, they may be assessed against the property in accordance with Section 90-30 of this Code.

(2) If the work involves a violation of subsection (e) of this section, the owner or occupant of the property shall be given 30 days written notice ordering the removal of a nonconforming mailbox structure. Such notice shall give the following information:

- a. The width of the road;
- b. A description of the structure;
- c. The location of the structure and its relation to the centerline of the road; and
- d. The section and fraction in which it is located.

(3) This subsection shall not limit the city's authority to issue citations for the violation of this section or to utilize any other remedy available to it at law.

(c) *Assessment of unpaid charges.* If the charges for the work are not paid, they may be assessed against the property, as provided in section 90-30 of this Code.

(d) *Rocks, stones or minerals placed in public right-of-way.* Rocks, stones or minerals may be placed within a public right-of-way under the following terms and conditions:

(1) Rocks, stones or minerals placed within a right-of-way shall not exceed 30 inches in total height;

(2) Rocks, stones or minerals shall not be placed closer than three feet from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street. However, if placement of the rocks, stones or minerals, at the minimum distance set forth in this subsection would locate them in or on a swale or ditch, the rocks, stones or minerals, may be placed so that they are no closer than 18 inches from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street;

(3) Placement of rocks, stones or minerals within a public right-of-way pursuant to this subsection shall be allowed only on residential streets having a speed limit of 25 miles per hour or less;

- (4) Placement of rocks, stones or minerals shall not obstruct or interfere with drainage;
- (5) Rocks, stones or minerals placed in the public right-of-way shall not be placed closer than three feet from a bicycle path or sidewalk;
- (6) If placement of rocks, stones or minerals within a public right-of-way pursuant to this subsection would be inconsistent with or contrary to the corner clearance requirements of other sections of this Code or any city ordinance, the corner clearance requirements shall control; and
- (7) Except as otherwise provided in this article, restrictions on rocks, stones and minerals placed in the right-of-way shall not apply to or include rocks, stones or minerals being used as mailbox support structures.

(e) *Mailbox supports within public right-of-way.* No mailbox support structure shall be placed, constructed or maintained within the public right-of-way of a street, highway or alley with an established speed limit of greater than 25 miles per hour unless it conforms to the following terms and conditions:

- (1) Mailboxes shall be supported by a single post. The following materials and dimensions may be used for such support, and no other materials or dimensions of supports shall be used:
 - a. A four-inch by four-inch wooden post;
 - b. A 4 1/2-inch diameter wooden post;
 - c. A standard steel pipe with an inside diameter not to exceed two inches; or
 - d. Perforated tubing not to exceed 2 1/2 inches by 2 1/2 inches.
- (2) Mailbox supports shall not be set in concrete.
- (3) No more than two mailboxes shall be mounted on a mailbox support structure as permitted by subsection (e)(1) of this section. Mailbox assemblies of three or more mailboxes may be permitted by the traffic engineer if the support structure and mailbox mounting have been shown to be safe by crash testing. However, lightweight newspaper boxes may be mounted below the mailbox on the side of the mailbox support.
- (4) Post-to-box attachment details shall be of sufficient strength to prevent the box from separating from the post top if the installation is struck by a vehicle.
- (5) No rocks, stones or minerals shall be used as mailbox support structures

Section 3. Article III of Chapter 94 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

DIVISION 1. GENERALLY

Sec. 94-76. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjoining property owner means a person who holds solely or jointly a fee interest in property adjoining or contiguous to a sidewalk or a nonmotorized vehicle-pedestrian path or who is purchasing such property under a land contract. Where applicable, the term "adjoining property owner" shall include homeowners' associations and condominium associations.

Construct means any action taken in the course of construction.

Construction means the replacement, repair or realignment of existing nonmotorized vehicle-pedestrian paths or sidewalks.

Nonmotorized vehicle-pedestrian paths means asphalt or concrete nonmotorized vehicle-pedestrian paths-pathways abutting either existing or planned rights-of-way of 120 feet in width or greater, as designated on the city-adopted master right-of-way plan and as designated for nonmotorized vehicle-pedestrian paths on the nonmotorized vehicle-pedestrian path-pathway plan for the city as adopted by resolution of the city council.

Sidewalk means a public pathway-walk constructed of concrete for public use, five feet in width, and located on public streets.

Sec. 94-77. Purpose.

The city council finds and determines that the construction, maintenance, and repair of sidewalks and nonmotorized vehicle-pedestrian paths is necessary for the public health, safety, and welfare. Certain acts and conditions occurring on or affecting nonmotorized vehicle-pedestrian paths and sidewalks in the city which may endanger bicyclists or pedestrians or cause damage to or prevent or inhibit public use of nonmotorized vehicle-pedestrian paths and sidewalks shall be prohibited.

Sec. 94-78. Enforcement.

This article shall be enforceable by the mayor, the county sheriff's department, the building department, and other enforcement officers as the mayor may designate.

Sec. 94-79. Citation of illegally parked vehicle.

- (a) *Owner presumed responsible.* When a motor vehicle without a driver is found parked or stopped in violation of this article, the registered owner of the vehicle shall be presumed responsible.
- (b) *Identifying information recorded.* The officer who finds the vehicle shall take down its license plate number and any other information displayed on the vehicle that might identify its owner.
- (c) *Appearance citation.* The officer shall conspicuously affix to the vehicle an appearance citation.

Sec. 94-80. Prohibitions.

Except for utility company vehicles being used in the performance of utility maintenance or repair or except when necessary to comply with the law or the directions of a police officer or traffic control device or as authorized by the mayor or a department of the city, no person shall:

- (1) Stop, stand, or park a vehicle on or overhanging a nonmotorized vehicle-pedestrian path or sidewalk in the city;
- (2) Operate a vehicle on or across a nonmotorized vehicle-pedestrian path or sidewalk in the city, except to enter or leave adjacent property at a driveway or when necessary for access to a subdivision common area for purposes of lawn maintenance;
- (3) Cause the commission or occurrence of any act or condition which creates a hazard on or near any nonmotorized vehicle-pedestrian path or sidewalk in the city; or
- (4) Cause the commission or occurrence of any other act or condition which damages any nonmotorized vehicle-pedestrian path or sidewalk in the city.

DIVISION 2. SIDEWALK CONSTRUCTION

Sec. 94-106. Permit required.

No person shall construct or repair any sidewalk pursuant to this article without a permit.

Sec. 94-107. Application for permit.

An applicant shall submit a written application to the department of public service before a sidewalk construction permit may be issued. The application shall contain the following information:

- (1) The name and address of the property owner adjoining the sidewalk to be constructed or repaired;
- (2) The name and address of the contractor installing or repairing the sidewalk;
- (3) A description of the sidewalk to be constructed or repaired, including estimated square footage of work to be done and a description of location relative to the public right-of-way; and
- (4) A statement signed by the adjoining property owner and contractor agreeing to conform to the specifications and regulations of this article.

Sec. 94-108. Inspection fees.

An inspection fee per property address, as provided in section 54-651, shall be charged at the time application for the permit required by this division is made. If the city's inspection cost is less than the fee provided in section 54-651, the city shall refund the difference. If the city's inspection cost exceeds the fee provided in section 54-651, no additional amount shall be charged.

Sec. 94-109. Written approval required.

Where the sidewalk to be constructed will be located in whole or in part in the right-of-way adjacent to the road under the jurisdiction of the state department of transportation or the

county road commission, no sidewalk permit shall issue from the department of public service until written approval of such applicable government entity is obtained.

Sect. 94-110. Insurance required.

If construction under this article is to be performed by a contractor who is not the adjoining property owner, prior to the issuance of a permit, the contractor shall file a certificate of insurance with the city clerk evidencing comprehensive liability insurance, with combined single limits coverage of at least \$500,000.00 and umbrella liability coverage of at least \$1,000,000.00. The city shall be named as certificate holder and entitled to at least 30 days' written notice of cancellation or material change in the insurance.

Sec. 94-111. Liability.

- (a) *Applicant.* The applicant for the permit required by this division shall remain liable for any and all defects and repairs for a period of 18 months after the date of final inspection and approval, including defects and repairs occasioned by settling, weather, erosion, tree roots, or any other cause.
- (b) *Adjoining property owner.* This section shall not relieve the adjoining property owner from liability as provided in this article.
- (c) *Indemnification.* The adjoining property owner shall be entitled to indemnification from the contractor for any repairs to the sidewalk for a period of 18 months after the date of final inspection and approval.

Sec. 94-112. Standard specifications.

The city engineer shall keep on file in his office standard specifications for the construction of sidewalks. All such sidewalks shall be constructed in accordance with such specifications.

DIVISION 3. SIDEWALK MAINTENANCE AND REPAIR; NONMOTORIZED VEHICLE-PEDESTRIAN PATH MAINTENANCE

Sec. 94-141. Maintenance by property owner.

The adjoining property owner or occupant of the lot or premises shall maintain the sidewalk adjoining such property. Such sidewalk shall be kept as follows:

- (1) Free from defects of every kind and nature and maintained in a condition of good repair.
- (2) Free from any deposits of debris, rubbish, or other objects that might or could be hazardous to persons using the sidewalk or nonmotorized vehicle-pedestrian path.
- (3) Free and clear from accumulations of snow, sleet, ice, and water as follows:
 - a. When any snow or ice shall cease to fall or form during the daylight hours, such snow or ice shall be cleared from the sidewalk within 48 hours after such cessation.
 - b. When any snow or ice shall cease to fall or form during the nighttime, such snow or ice shall be cleared from the sidewalk within 48 hours after sunrise.

(4) Free from obstructions encroaching from adjoining or adjacent property (including adjacent public right-of-way located between the adjacent property and the inside edge of the pathway or sidewalk), including but not limited to overhanging tree limbs, ~~bushes and the like and shrubs~~. The minimum clearances that shall be maintained free from such obstructions shall be eight (8) feet vertical and ~~three feet~~ one (1) foot horizontal. There shall be maintained a minimum clearance of ten (10) feet vertical and one (1) foot horizontal for nonmotorized vehicle-pedestrian paths.

(5) Free from obstructions from adjoining or adjacent property (including adjacent public right-of-way located between the adjacent property and the inside edge of the pathway or sidewalk) interfering with site distance lines, at driveways and other sidewalks intersecting the sidewalk. A clear and unobstructed sitesight triangle must be created using a base leg of fifteen (15) feet from the sitesight obstruction to any sidewalk or driveways or sidewalks intersecting such sidewalk, or fifteen (15) feet from the sight obstruction to any nonmotorized vehicle-pedestrian path or driveways or nonmotorized vehicle-pedestrian path intersecting such nonmotorized vehicle-pedestrian path.

Sec. 94-142. Repair of damage by developer.

Sidewalks provided by a developer that are damaged prior to occupancy shall be repaired by the developer prior to the date of final occupancy, or if repairs cannot be made, a cash escrow in an amount equal to 150 percent of the projected cost for such repairs shall be posted with the city.

Sec. 94-143. Repair or reconstruction by property owner.

(a) *Written notice.* Upon determination by the department of public service that any sidewalk or portion thereof is in need of repair or elimination from encroachment, the department shall serve a written notice upon the adjoining property owner to the portion of such sidewalk requiring repair or elimination of encroachment by first class mail to the last known address of such owner in accordance with the following:

(1) *Determination of property owners.* Adjoining property owners shall be determined from the current city tax roll.

(2) *Proration of cost among adjoining owners.* When a sidewalk requiring repair or reconstruction is contiguous to more than one lot or parcel, costs of such repair or reconstruction shall be prorated between adjoining property owners on the basis of front footage repaired.

a. The failure of one adjoining property owner to undertake such repair where such sidewalk abuts more than a single parcel shall not excuse the remaining adjoining property owner from the duties established in this section.

b. Such notice shall require that the adjoining property owner shall perform such repairs ~~or elimination of encroachments~~ within 45 days of the date of such notice; the elimination of encroachments shall occur within 14 days of such notice.

(b) *Failure to comply.* Failure to comply shall subject the owner to the following:

(1) *Correction by city; owner billed cost.* If the adjoining property owner fails to repair the sidewalk ~~or remove the encroachment~~ within 45 days of such notice, or remove the encroachment within 14 days, the city may perform the repair or remove the encroachment and bill such adjoining property owner the total cost thereof, together with an additional fee of 1530 percent for engineering supervision and general administration expense.

(2) *Lien against property.* If payment is not received by the city within 60 days after such billing, such amount shall become a lien on the property and shall be assessed and collected in the same manner as other taxes and assessments under the Michigan General Property Tax Laws, Public Act No. 206 of 1893 (MCL 211.1 et seq.).

Sec. 94-144. Violations.

Any person who violates this article shall be responsible for a municipal civil infraction.

Section 4. Article II of Chapter 106 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

ARTICLE II. TREES

DIVISION 1. GENERALLY

Sec. 106-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ANSI A300 means the most recent revision of the American National Standard for tree care operations, all parts and companion publications. ANSI A300 definitions are incorporated by reference and shall be controlling.

Certified Arborist means an individual engaged in the profession of arboriculture who, through experience, education and related training, possesses the technical competence to provide for or supervise the management of trees and other woody plants (per ANSI A300, 4.2) and is certified by the International Society of Arboriculture.

Director means the director of the city department of parks, ~~and~~ forestry, ~~and facilities~~ and any representative, employee or agent authorized by the director to administer or enforce this article.

Drip line means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

~~Framing means a pruning technique which removes many inside branches and results in clusters of small branches at ends of the main limbs.~~ Lion's tailing means the removal of an excessive number of inner, lateral branches from parent branches.

Ornamental tree means a tree less than 25 feet tall, with a crown spread of 10 feet or more at maturity.

Park tree means any tree, shrub, ~~bush~~ or other woody vegetation planted or located within a city park.

Pathway means a non-motorized vehicle-pedestrian pathway.

Person means any individual, firm, partnership, association, corporation or other entity.

Pruning means the selective removal of plant parts to meet specific goals and objectives (per ANSI A300, 4.30).

Public utility means water, sewer and storm drainage systems and facilities, as well as electric, gas, telephone and cable television lines.

~~*Roundover* means the trimming of branches to present a sheared appearance over the total crown. This pruning technique results in cuts anywhere along a branch and not necessarily at the base of a limb.~~

Street tree means any tree, shrub, ~~bush~~ or other woody vegetation planted or located within a public street or road right-of-way under the city's jurisdiction.

~~*Topping or pollarding* means the severe cutting back of limbs to such a degree so as to remove the normal canopy or destroy or disfigure the tree. The terms "topping" and "pollarding" do not include normal pruning or maintenance. the reduction of a tree's size using internodal cuts without regard to tree health or structural integrity.~~

Tree lawn means the area between a sidewalk or pathway and the curb or street edge.

Sec. 106-27. Findings and purpose.

(a) The city council finds trees growing in street or road rights-of-way, parks and other public ~~grounds~~property of the city are a vital element in the appearance, character and welfare of the city and its residents. These trees provide not only aesthetic benefits but functional ones as well by ~~absorbing air pollutants and removing gaseous and particulate~~ contamination from the air, sequestering carbon, and returning oxygen to the atmosphere, reducing traffic noise, screening objectionable views, providing ~~cooling~~shade that reduces air temperatures, and ~~servicing as borders, buffers, and screens~~reducing storm water runoff and soil erosion.

(b) However, despite their many qualities, trees ~~growing in, overhanging or interfering~~that interfere with the use of street or road rights-of-way, parks and other public grounds of the city and dead, damaged or ~~diseased~~structurally unsound trees located on both public and private property in the city may, when they are not properly planted, maintained or removed, endanger pedestrians, motorists and adjacent residents; cause ~~property~~ damage; ~~disturb or damage lawns, curbs, bike paths to streets, pathways,~~ sidewalks, and public utilities; and other property; harm other trees; and ~~generally~~ become a detriment, hazard, threat or potential liability for the city.

(c) Therefore, the purpose of this article is to promote and protect the public health, safety, and general welfare of the city and its residents by providing for the regulation of the planting, ~~care~~maintenance and removal of trees growing in, overhanging, encroaching into or interfering with public street and road rights-of-way, parks and other public grounds of the city and for the pruning or removal of trees located on private property in the city which threaten pedestrian or traffic safety or which may interfere with public utilities or public improvements.

Sec. 106-28. Promulgation of rules.

The director is authorized to promulgate additional rules, regulations, and specifications consistent with this article concerning the ~~trimming, spraying,~~ planting, care, maintenance, removal, pruning, and protection of street trees, park trees, or trees on other public ~~grounds~~property owned or leased by the city.

Sec. 106.29. Conflict with tree conservation standards.

If a conflict or disparity occurs between any sections and regulations of this article and those contained in article III of chapter 126 pertaining to tree conservation, with respect to an activity which is regulated under both articles, the more stringent section or regulation shall apply.

Sec 106-30. Enforcement.

This article shall be enforceable by the director, the county sheriff's department, ~~the building department,~~ and other enforcement officers as the mayor may designate.

DIVISION 2. TREES ON PUBLIC PROPERTY

Sec 106-56. Street tree planting requirements.

The planting of street trees shall conform to the following requirements:

(1) *Prohibited species.* The following prohibited tree species shall not be planted as street trees:

- a. ~~Box elder (Acer negundo)~~Acer negundo (box elder);
- b. ~~Tree of heaven (Ailanthus altissima)~~Acer saccharinum (silver maple);
- c. ~~Catalpa (Catalpa speciosa)~~Ailanthus altissima (tree of heaven);
- d. ~~Poplar species (Populus sp.)~~Catalpa species;
- e. ~~Willow species (Salix sp.)~~Elaeagnus species (autumn and Russian-olive);
- f. ~~American elm (Ulmus americana)~~Morus species (mulberry);
- g. ~~Russian olive (Elaeagnus angustifolia)~~Populus species (poplar);
- h. ~~Silver maple (Acer saccharinum); and~~Rhamnus species (buckthorn);
- i. ~~Siberian elm (Ulmus pumila)~~Salix species (willow); and
- j. Ulmus pumila (Siberian elm)

(2) *Spacing and distance requirements.* The ~~new~~ planting of new street trees shall conform to the following minimum spacing and distance requirements, unless the director determines closer spacing or a lesser distance will not create an unsafe condition, threaten pedestrian or traffic safety, ~~or~~ interfere with public utilities or public improvements, or be too close to allow for the tree to grow to mature size:

- a. ~~Tree size when mature. Tree size when mature shall be as follows:~~

TABLE INSET:

—	Diameter (inches) —	Height (feet) —	Width (feet) —
Small —	Up to 12 —	Up to 30 —	Up to 30 —
Medium —	Up to 24 —	30–50 —	30–50 —
Large —	24+ —	50+ —	50+ —

ba. *Minimum planting distances.* Minimum planting distances shall be as follows:

TABLE INSET:

	Tree Size Type			
	Large Deciduous Shade	Medium Evergreen	Small Ornamental	Shrub
From Fixed Objects				
Curbs or road street edge	10 feet	10 feet	10 feet	<u>10 feet</u>
Fire-h Hydrants	10 feet	10 feet	10 feet	<u>10 feet</u>
Public S streetlights	<u>10</u> 25 feet	<u>10</u> 25 feet	10 feet	-----
Sidewalks/pathways	<u>3</u> 5 feet	<u>3</u> 10 feet	<u>3</u> 10 feet	<u>5 feet</u>
Driveways	10 feet	10 feet	10 feet	<u>10 feet</u>
Street Corners	(See section 138-1079)			
Public utility poles/overhead wires	25 feet	25 feet	15 feet	-----
Underground public utility lines	<u>8</u> 5 feet	<u>6</u> 5 feet	<u>4</u> 5 feet	<u>5 feet</u>
Adjacent trees (center to center)	<u>3</u> 0 <u>2</u> 5 feet	<u>2</u> 5 <u>2</u> 0 feet	<u>2</u> 0 <u>1</u> 5 feet	<u>5 feet</u>
Adjacent lot	<u>1</u> 0 <u>5</u> feet	<u>1</u> 0 <u>5</u> feet	<u>1</u> 0 <u>5</u> feet	<u>5 feet</u>

- b. Where there are sidewalks and a “tree lawn” at least eight (8) feet wide, trees should be located halfway between the sidewalk and street. Trees shall not be planted by private property owners in “tree lawns” less than eight (8) feet wide. Evergreen trees shall not be planted in any tree lawn less than 20 feet wide.
- c. Trees shall not be planted in the “corner clearance triangle” formed by the first twenty-five (25) feet along the road right-of-way line in each direction from the corner.
- d. Prior to planting “Miss Dig” shall be contacted to have underground utility lines marked at least three (3) days before planting.
- e. Trees shall be planted at least 15 feet away from curb or road edge where speed limit is more than 35 mph.

(3) *Free from insects and disease.* Trees being planted as street trees shall be free from ~~infectious or injurious~~ insects or disease that could affect other susceptible trees with such organisms and would likely cause significant decline or death.

(4) *Traffic engineering standards.* The planting of street trees shall conform to ~~any~~—additional requirements concerning safe vehicle recovery area; ~~crashworthiness~~; and other engineering standards as may be prescribed by the city ~~traffietransportation~~ engineer.

Sec. 106-57. City authority.

Subject to article III of chapter 126 of this Code, the city may plant, prune, trim, treat, maintain and remove street trees, park trees or trees on other public grounds and rights-of-way of the city as the director determines necessary in order to ~~promote or protect public health and safety or to preserve or enhance the symmetry and beauty of the trees~~provide for public safety by improving the structure and enhancing the symmetry of the trees. This authority specifically includes the power to remove any tree or portion thereof which the director determines:

- (1) Is in an unsafe condition confirmed by a certified arborist engaged by the City;
- (2) Is afflicted with ~~any infectious or injurious insects or disease~~pests or diseases that may cause a serious threat to other trees;
- (3) Threatens pedestrian or traffic safety; or
- (4) May interfere with public utilities or public improvements.

Sec. 106-58. Adjacent owners planting street trees.

(a) *Permit required.* Street trees may be planted by an adjacent private property owner, at his sole cost, provided a permit is obtained pursuant to section 94-33 of this Code prior to planting. Adjacent property owners shall not be charged a permit fee for planting trees.

(b) *Selection and location.* The selection and location of the trees shall conform to the provisions and requirements of this article and corner clearance requirements of section 138-1079, and the director shall have authority to designate location, size, species and/or variety of the trees as a condition of any permit for planting.

(c) *Condition.* Whether expressly stated or not, a condition of any permit for the planting of street trees shall be that the city may prune, trim, treat, maintain, and remove any such tree without compensation to the adjacent private property owner.

(d) *Planted without permit.* A person who plants a street tree without an approved permit may be required to remove the tree(s) at that person's sole expense if the director determines the tree(s) have not been planted in accordance with this Article.

Sec. 106-59. Protection of public trees.

No person shall, without obtaining ~~advance permission~~a right of way tree permit from the director, do any of the following in relation to any street tree, park tree or tree on any other public ~~grounds~~property and rights-of-way of the city:

- (1) *Objects on trees.* Fasten any sign, card, poster, wire, spike, nail, rope or other material to, around or through a tree;
- (2) *Fire.* Permit any fire to burn where the fire or its heat, smoke or fumes may or will injure a tree;

- (3) *Chemicals*. Permit any chemical to seep, drain or be emptied on or near a tree in an amount that may be toxic to the tree;
- (4) *Free passage to root system*. Deposit, store, place or maintain any stone, brick, sand, soil, concrete, excessive mulch, plastic sheeting or other material, including raised planting beds around the base of a tree, which may or will impede the free passage of air, water or fertilizer to the roots of a tree;
- (5) *Protective construction barrier*. Fail to provide, erect or maintain a ~~suitable~~ protective barrier approved by the director around a tree likely to be injured during any construction;
- (6) *Electrical wires*. Knowingly permit any electrical wires to contact or be attached to a tree;
- (7) *Excavation or paving within drip line*. Excavate any ditch, tunnel or trench or lay any paved drive or pathway/sidewalk within the drip line of a tree;
- (8) *Vehicles ~~too close to trunk~~ within drip line*. Drive, park, haul or store any automobile, truck, trailer, boat, motorcycle, snowmobile, recreational vehicle or other motor vehicle within ~~ten feet of~~ a tree's ~~trunk~~drip line, unless or except while within the clearly delineated traveled portion or parking area of any street, road, parking lot or driveway; or
- (9) *Climbing using spurs*. Climb a tree while wearing spurs, unless that person is in the process of removing the tree.

Sec. 106-60. Prohibited pruning practices.

The topping, ~~pollarding, framing or roundover or lion's tailing~~ of any street tree, park tree or tree on any other public ground or right-of-way of the city is prohibited, except with respect to shrubs or bushes located within a public street or road right-of-way. However, ~~ordinary care~~, pruning and maintenance of street trees in accordance with the latest version of ANSI A300 shall be allowed.

Sec 106-61. Street tree removal by private persons.

- (a) ~~Advance permission~~Right of way permit required. No person shall remove or destroy any street tree without first obtaining a permit in accordance with section 94-33 of this Code.
- (b) *Condition of removal*. As a condition of removal of a ~~healthy~~ street tree, the director may require the person removing or causing removal of the street tree to plant, at the person's sole expense, a tree of a kind and size designated by the director in place of the one removed at the removal site, ~~or at~~ an alternate site on city-owned property approved by the director, or pay into the city tree fund an amount equal to the cost of planting an approved tree.
- (c) *Liability protection*. As a further condition of removal of a street tree, the director shall require the person removing or causing removal of a street tree to present a certificate of insurance evidencing insurance coverage in an amount the ~~director~~City's transportation engineer deems necessary to indemnify for any liability for bodily injury or

property damage which may arise from the tree removal operation or submit a hold harmless from liability statement acceptable to the City's transportation engineer.

(d) *Protection of adjacent trees.* Any person removing a street tree shall protect adjacent trees from damage in a manner approved by the director.

(e) *Stumps and debris.* Any person removing a street tree shall cut or remove the stump to below the surface of the ground and shall remove and dispose of all debris from the removed street tree. The person removing the stump shall contact "Miss Dig" to have underground utility lines marked at least 3 days before stump removal. After stump removal, the soil grade shall be reestablished to be consistent with the adjacent grade.

(f) *Bond.* To ensure faithful performance of the conditions and requirements of this section, any person removing a street tree ~~shall~~ may be required, prior to removal, to submit to the director a cash bond in an amount equal to the estimated cost of completing the work, which bond shall be refunded upon satisfactory completion of the work.

DIVISION 3. TREES ON PRIVATE PROPERTY

Sec. 106-91. Authority of city.

If the owner of any private property on which a tree ~~overhangs endangers or interferes with~~ any public street or road right-of-way, sidewalk, ~~bikepath-pathway, public utility, traffic control signals, signs or devices,~~ or other public ~~groundproperty~~ of the city fails to ~~prune-correct~~ the ~~tree-endangerment or interference~~ as required under this division within fourteen (14) days after receiving written notice from the city requesting the work to be performed, the city shall have the authority to prune, ~~trim and/or treat~~ or remove the tree ~~or to remove any dead, broken or decayed limbs and branches therefrom,~~ as determined necessary by the director in order to achieve and maintain ~~required minimum height or corner clearance or to eliminate obstruction of streetlights, street identification signs, or traffic control devices and signs~~ public safety. The city may charge the owner for the ~~reasonable~~ cost of the work ~~and plus a 30% administration fee.~~ if the charges are not paid, they may be assessed against the property in accordance with section 90-30 of this Code.

Sec. 106-92. ~~Pruning~~Maintenance by owner.

~~The owner of any private property on which a tree that overhangs any public street or road right of way, sidewalk or bikepath in the city shall keep the branches pruned in order to achieve and maintain a minimum height clearance of 14 feet over the traveled portion of the street or road and ten feet over a sidewalk or bikepath. In addition, the owner shall keep the tree pruned so as not to obstruct or obscure streetlights, street identification signs, or traffic control devices or signs.~~The owner of any private property adjacent to any public street or road right-of-way, sidewalk or pathway in the City shall be responsible for maintaining trees and shrubs located on the private property (or within any public right-of-way between the private property and the adjacent sidewalk or pathway) that overhang or encroach into or over any public street or road right-of-way, sidewalk or pathway by keeping branches pruned to maintain a minimum height clearance of fourteen (14) feet over and three (3) feet back from the edge of the street or road, and eight (8) feet over and one (1) foot back from the edge of a sidewalk, and ten (10) feet over and one (1) foot back from the edge of a pathway. In addition, the owner shall keep the trees and shrubs pruned to not obstruct or obscure streetlights, street identification signs, fire

hydrants, or traffic control devices or signs. Trees and shrubs must be maintained to provide clearance of at least one (1) foot back from the edge of the sidewalk or pathway.

Sec. 106-93. ~~Fallen-broken-decayed-limbs~~Structurally unsound trees and branches.

The owner of any private property ~~on which with~~ a tree that ~~overhangs~~endangers any public street or road right-of-way, sidewalk, ~~bikepath~~pathway or other public ~~ground~~property of the city shall be responsible for removing ~~all~~structurally unsound trees and dead, broken, ~~poorly attached~~ or decayed limbs and branches that may endanger the public. The owner shall also promptly remove from the public street or road right-of-way, sidewalk or ~~bikepath~~pathway any branches or limbs that fall from the tree.

Sec. 106-94. Corner clearance.

Trees, ~~and~~ shrubs ~~or bushes~~ growing ~~on private property~~ within ~~at~~he required corner clearance zone, as distinguished from new plantings which are prohibited in sections ~~106-56 and~~ 138-1079, shall be removed by the property owner or else kept pruned to a maximum height of 30 inches or less above the public street or road surface. Alternatively, large existing trees need not be removed and may be left within the required corner clearance zone, provided they are kept pruned to achieve and maintain the minimum height clearances set forth in section 106-92, ~~or as approved by the city's transportation engineer.~~

Sec. 106-95. Removal.

- (a) Public nuisance. Any tree growing or located on private property in the city which, in the director's judgment, threatens pedestrian or traffic safety or may interfere with public utilities or public improvements due to damage, death, injurious disease, or insect infestation of the tree shall be considered a public nuisance.
- (b) Notice and abatement. ~~In accordance with the procedure set forth in section 90-31 of this Code, the~~ The city may, after providing notice to the owner of the private property, cause the tree to be removed as the director deems necessary in order to abate the public nuisance, and the city shall assess the cost of abatement to the owner.

Section 5. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 6. Penalty. All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, or as otherwise prescribed herein.

Section 7. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, following its publication in the *Rochester Post* on _____, 2012.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2012.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF ON _____, 2012.

Jane Leslie, Clerk
City of Rochester Hills