

09/13/2019

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 126, ARTICLE III, TREE CONSERVATION, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO UPDATE AND MODIFY REGULATIONS, TO REPEAL CONFLICTING ORDINANCES, AND TO PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Chapter 126, Article III, of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

DIVISION 1. – GENERALLY

Sec. 126-261 – 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:

Agriculture means the use of land for the primary purpose of deriving income from growing plants or trees on land, including but not limited to land used principally for fruit or timber production, but not including land used principally for another use and only incidentally for growing trees or plants for income.

Commercial nursery or tree farm means a licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and grown for sale to the general public in the ordinary course of the licensee's business.

Diameter at breast height (dbh) means a tree's diameter in inches measured by diameter tape at 4½ feet above the ground. On multistem trees, the largest diameter stem shall be measured.

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

Landmark Tree means all trees listed in the American Forests'ry Association's Champion Trees National Registry of Big Trees or the Michigan Botanist'sical Club's Champion Trees of Michigan Big Tree Database.

Regulated tree means a tree having six (6) inches or greater diameter at breast height, which is not otherwise exempt from regulation under this article.

Remove or removal means the act of removing or destroying a tree by digging up or cutting down, or the effective removal or destruction through damage, poison, or other means.

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Specimen Tree means all regulated trees in the city with 24 inches dbh or greater, and all trees listed in the table in subdivision 126-397(3)a.

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Transplant means the relocation of a tree from one place to another on the same property.

Tree means any living, self-supporting, woody plant of a species which normally grows to an overall height of 15 feet or more.

~~*Undeveloped* means a parcel of land which is unplatted and substantially unimproved. With respect to land that is partially improved by virtue of a building or other improvement located on a portion of the land, the portion of the land that does not contain the building or improvement shall be considered undeveloped.~~

Sec. 126-262. – Findings.

Rapid growth, the spread of development, and increasing demands upon natural resources have the effect of encroaching upon, despoiling, or eliminating many of the trees 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, recreation and economic assets to current and future residents of the city. Specifically, the city council finds that:

- (1) *Public health protected.* Tree and woodland growth protects public health through the absorption of air pollutants and contamination, through the reduction of excessive noise and mental and physical damage related to noise pollution, and through its cooling effect in the summer months;
- (2) *Public safety enhanced.* Trees and woodlands enhance public safety through the prevention of erosion, siltation, and flooding; and
- (3) *Essential component of general welfare.* Trees and woodland areas are an essential component of the general welfare of the city, providing play and recreational areas, natural beauty, and an irreplaceable heritage for current and future city residents.

Sec. 126-263. – Purpose.

The purposes of this article are to:

- (1) Provide for the protection, preservation, proper maintenance and use of trees and woodlands located in this 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.
- (2) Protect the woodlands, including trees and other forms of vegetation, of this 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 their geological, ecological, or historical significance.

- (3) Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of this city.

~~Sec. 126-264. — Applicability of article.~~

- ~~(a) *Undeveloped land.* This article shall apply to all land in the city which was undeveloped on August 3, 1988.~~
- ~~(b) *Approved site plans and plats.* This article shall apply to all land included within a site plan, preliminary subdivision plat, or condominium plan submitted to the city for approval, except this article shall not apply to land included within a site plan which received final approval or a preliminary subdivision plat which received tentative approval prior to August 3, 1988, provided the site plan or plat approval remains in effect and in good standing under article III of chapter 122 or under chapter 138 of this Code.~~

Sec. 126-265~~4~~. – Responsibility for enforcement.

Compliance with this article shall be enforced by the mayor, the county sheriff's department, the building department director and ordinance enforcement officers, and other enforcement officers as the mayor may designate.

Sec. 126-266~~5~~. – Enforcement.

- (a) *Municipal civil infraction.* Any person who violates any section of this article shall be responsible for a municipal civil infraction, subject to a fine as provided in section 66-37, plus costs and other sanctions for each infraction.
- (b) *Injunctive relief.* Any activity conducted in violation of this article 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.
- (c) *Fee for illegally removed trees.* In addition to any civil fine or sanction provided for a determination of responsibility for violation of this article, and notwithstanding whether or not the city has commenced a civil suit for injunctive relief:
 - (1) *Payment to city tree fund.* Any person who removes or causes any tree to be removed except in accordance with this article shall forfeit and pay to the city a civil fee equal to the total value of trees illegally removed or damaged, as computed ~~from by City staff applying per~~ the International Society of Arboriculture ~~Shade Tree Evaluation Guide or The Michigan Shade Tree Evaluation Guide standards.~~ 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.
 - (2) *Tree replacement.* 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-for-inch basis computed by adding the total diameter measured at the diameter at breast height in inches of the illegally removed or damaged trees, unless an alternative basis of replacement or restitution is approved by the city. The city

may use other reasonable means to estimate the tree loss if destruction of the illegally removed or damaged trees prevents exact measurement.

- (3) *Fee payment and tree replacement.* The city may also require a combination of fee payment and tree replacement.
- (d) *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 sections of this article, including any conditions attached to a tree removal permit, have been fully met. Failure to obey a stop work order shall constitute a violation of this article.

Sec. 126-2676. – Exceptions to tree removal permit requirement.

Notwithstanding the requirements of subdivisions I and II of division 32 of this article, the following activities are allowed without a tree removal permit, unless otherwise prohibited by statute or ordinance:

- (1) *Agriculture, nursery business, tree farm.* Tree removal or transplanting occurring during use of land for agriculture or the operation of a commercial nursery or tree farm, but only in regard to trees planted for commercial nursery or tree farm purposes, and not in regard to naturally occurring trees.
- (2) *Emergencies.* Actions made necessary by an emergency, such as tornado, windstorm, flood, freeze, dangerous and infectious insect infestation or disease, or other disaster, in order to prevent injury or damage to persons or property or to restore order.
- (3) *Road right-of-way and City Owned Properties.* Tree removal or transplanting performed by or on behalf of the city, the county road commission or the state department of transportation within a road right-of-way, or on city--owned properties, where the trees pose a safety hazard to pedestrian or vehicular traffic or threaten to disrupt public utility services or where necessary for road improvement or maintenance, provided that all feasible and prudent efforts have been made to prevent or minimize tree damage or loss and, further provided, that prior written notice is given to the department of parks, ~~forestry, and facilities~~ and natural resources.
- (4) *Utilities.* Tree removal by the city or public or private utility companies which is necessary in connection with the installation, repair or maintenance of utilities, provided that all feasible and prudent efforts have been made to prevent or minimize tree damage or loss and, further provided, that prior written notice is given to the department of ~~parks and natural resources, forestry, and facilities~~ parks and natural resources. For purposes of this subsection, utilities shall include water, sewer and stormwater drainage systems and facilities, as well as electric, gas, telephone, telecommunications, and cable television lines.
- (5) *Dead, diseased or damaged trees.* ~~Dead, diseased or damaged trees. Removal of~~ dead, terminally diseased, or critically damaged trees, where the damage resulted

~~from nonhuman cause and where the department of parks and natural resources concurs the nature or extent of the disease or damage warrants removal. This exception applies to a tree that is ~~believed~~ expected to otherwise die within 2 years if left standing. Removal of dead, diseased, or damaged trees, where the damage resulted from an accident or nonhuman cause and where the Director of the department of parks, forestry, and facilities natural resources, or his/her designee, concurs the nature or extent of the disease or damage warrants removal.~~

- (6) *Nominal activity.* Where the activity involves the removal or transplanting of three or fewer regulated trees within a six-month period and is not related to the development of a parcel or construction of a building or structure. This ~~subsection exception~~ shall not apply to trees designated as ~~historic or~~ landmark trees pursuant to division 43 of this article.
- (7) *Residential (small parcels).* Removal or transplanting of trees growing on occupied one-family residential parcels of less than one acre. This ~~subsection exception~~ shall not apply to trees located in the public right-of-way or to trees designated as ~~historic or~~ landmark trees pursuant to division 43 of this article.
- (8) *Residential (large parcels).* On occupied one-family residential parcels of one acre or more, the removal or transplanting of trees due to construction of appurtenances or structures accessory to existing structures. This ~~subsection exception~~ shall not apply to trees located in the public right-of-way or to trees designated as ~~historic or~~ landmark trees pursuant to division 43 of this article.

~~DIVISION 2. VARIANCE~~

~~Sec. 126-296. Authority.~~

~~The city council may grant a variance from this article when undue hardship may result from strict compliance.~~

~~Sec. 126-297. Notice.~~

- (a) ~~*Adjoining property owners.* The city shall send notice of a request for a variance from this article by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the variance is requested, including property directly across public rights of way and easements.~~
- (b) ~~*Timing and content.* The notice shall be sent at least seven days before the meeting at which the city council will consider the variance request and shall include a statement that interested persons may examine the application for a variance at the planning department.~~

~~Sec. 126-298. Conditions.~~

~~In granting any variance from this article, the city council may prescribe conditions that it deems necessary or desirable for the public interest.~~

Sec. 126-299. — Findings.

No variance ~~Variance from this article shall not be granted unless the city council finds as follows:~~

- (1) ~~There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.~~
- (2) ~~The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.~~
- (3) ~~The variance will further the objectives and policies of this article, this Code, the zoning ordinance in chapter 138, and the master land use plan.~~

DIVISION 32. — TREE REMOVAL

Subdivision I. — In General

Sec. 126-326. — ~~Plat or site plan approval~~ Permit required.

- (a) ~~Regulated tree removal.~~ Subject to the exceptions in Section 126-266, a tree removal permit is required for the removal or relocation of any regulated tree.
- (b) ~~Plat or site plan approved.~~ A regulated tree that is to be removed as part of land clearing, construction or development activity which requires site plan or subdivision plat approval may be removed only after final approval of the site plan or preliminary subdivision plat. Such final approval must precede issuance of the tree removal permit.

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Sec. 126-327. — ~~One-family residential~~ Land developments.

In addition to other requirements of this article, there shall be compliance with the following requirements in all ~~one-family residential~~ land developments which, as proposed, will result in ~~two~~ one or more lots or building sites; ~~through land division, subdivision, or condominiums;~~

- (1) *Building envelopes.* The developer shall designate building envelopes for all structures as follows:
 - a. *One-family residential developments (for building sites less than 1 acre).* The building envelope for lots and building sites that are less than one (1) acre in area in one-family residential subdivisions, site condominiums, unplatted parcels, and other one-family residential developments ~~which, as proposed, will result in two or more lots or building sites~~ shall be the buildable area remaining on at the lot or building site after satisfying the setback requirements in chapter 138.

- b. One-family residential development (for building sites 1 acre or more). The building envelope for lots and building sites that are one (1) acre or more in area in one-family residential subdivisions, site condominiums, unplatted parcels, and other one-family residential developments shall be delineated by the footprint of the proposed principal dwelling or any additions or accessory buildings and structures extended outward by thirty (30) feet.
 - c. All other developments. The building envelope for all land developments other than one-family residential, shall be the proposed building(s) footprint(s) for principal and accessory buildings and structures.
 - b~~d~~. Activities within building envelope. Once building envelopes have been designated in accordance with subsection (1)a - (1)c of this section and a tree removal permit has been approved for the development, it shall not be necessary to obtain a tree removal permit for the subsequent construction of structures or improvements or for other activities occurring within a building envelope.
 - e~~e~~. Activities outside building envelope. Subject to the exceptions enumerated in section 126-2676, a separate, additional tree removal permit shall be required for construction or development activities conducted by the developer or builder outside of the building envelope designated in accordance with subsection (1)a - (1)c of this section.
- (2) Minimum preservation percentage. ~~For one family residential developments which, as proposed, will result in two or more lots or building sites through land division, subdivision, or condominiums,~~ The developer shall preserve and leave standing and undamaged a minimum of 3740 percent of the total number of regulated trees ~~which that~~ exist within the land area being developed, prior to development. However, trees contained within the designated building envelopes shall not ~~count be included in the calculation of~~ toward the required minimum preservation percentage.

Sec. 126-328. – Inspections.

Under this article, the permit applicant or permit holder shall allow city inspectors to enter and inspect the premises at any reasonable time during the application process and land clearing, construction, development, and tree removal activities to verify compliance with this article. Failure to allow inspection shall constitute a violation of this article.

Subdivision II. – Permits

Sec. 126-356. – Required.

Subject to the exceptions enumerated in section 126-267~~6~~⁶, and further subject to section 126-~~327~~³⁵⁷ relative to forest management permits, ~~no~~ persons shall not remove, cause to be removed, transplant, damage, or destroy, on any land in the city to which this article applies, any regulated tree without first obtaining a tree removal permit. In addition, a tree removal permit shall be required for the construction of any structure, land clearing, grubbing, trenching, grading, excavating, filling, or placement within the drip line of any regulated tree of any material which may cause harm to the tree.

Sec. 126-357. – Forest management permit.

- (a) ~~Required~~*Maintaining and Enhancing Wooded Area.* Where the proposed tree removal is not related to land clearing, development of a parcel, or construction of a structure or other improvement, but rather is for the purpose of maintaining and enhancing a wooded area in accordance with professional forestry management methods, the director of the ~~department of parks, forestry, and facilities~~ and natural resources department may grant a forest management permit in lieu of a tree removal permit.
- (b) *Application.* An application for a forest management permit must be accompanied by the fee prescribed in division 3 of article IV of chapter 110 and a forest management plan prepared by a registered or certified professional forester. The forest management plan shall, at a minimum, include a description of the management program, a schedule for the work to be performed, reasons for the proposed tree removal, and an explanation of benefits to be obtained through the proposed tree removal.
- (c) *Minimum duration.* The area under a forest management permit must remain under forest management for a minimum of five (5) years.
- (d) *Supervision.* The forest management permit holder shall retain a registered or certified professional forester to supervise and direct all work under a forest management permit.

Sec. 126-358. – Application and fee.

- (a) *Required.* A person seeking a tree removal permit must submit a written application to the ~~department of~~ planning & economic development department when the permit is requested in connection with a development requiring site plan, plat, or condominium plan review or to the ~~department of parks, forestry, and facilities~~ and natural resources department for any other requests. The applicant shall pay a nonrefundable application/permit fee in accordance with division 3 of article IV of chapter 110.
- (b) *Time of application.* Application for a tree removal permit shall be made before commencement of the activity for which the tree removal permit is required. Where the site is proposed for development or other activity necessitating a building permit or site plan or plat review, application for a tree removal permit shall be made prior to or concurrent with building permit application or site plan or plat submittal.

Sec. 126-359. – Tree survey.

The permit applicant shall provide four (4) copies (ten (10) copies when accompanying a plat, site plan, or condominium plan) of a tree survey at a minimum scale of one inch equals 100 feet and containing the following additional information:

- (1) *Property dimensions.* The shape and dimensions of the property, and the location of any existing and proposed structure or improvement. ~~The location of proposed structures or improvements must also be staked at the site;~~
- (2) *Location of trees.* The ~~l~~location of all existing regulated trees; ~~and historic specimen and landmark trees;~~ ~~and any dead, diseased, or damaged trees~~ identified by their diameter at breast height and their common and botanical name. Trees proposed to remain, to be transplanted, or to be removed shall be so designated on the tree survey, and all regulated ~~and historic and landmark~~ trees must be numbered and marked in the field;
- (3) *Tree protection.* A description and depiction on the tree survey of how regulated trees intended to remain or to be relocated will be protected during construction or development activity, and the location of protective barriers. ~~The percentage of preserved trees proposed shall be included.;~~
- (4) *Easements and setbacks.* Location and dimension of existing and proposed easements, as well as all setbacks required by chapter 138;
- (5) *Grade changes.* Designation of existing topography and any grade changes proposed for the property, and an explanation of how proposed grade changes may affect regulated trees intended to remain or to be located, including a topographic elevation at the base of all trees to be saved within 20 feet of any proposed construction or development activity;
- (6) *Replacement.* A landscape plan and cost estimate for the proposed tree replacement program with a detailed explanation including the number, size and species; and
- (7) *Tree identification.* A statement that all trees being retained will be identified by painting, flagging, or some other approved method and, where protective barriers are necessary, that they will be erected before work starts.

Sec. 126-360. – Large tracts.

For construction or development activities necessitating plat, site plan, or condominium plan approval or for any tracts of ten acres or larger, the applicant for a tree removal permit shall provide copies of the following additional information:

- (1) The required tree survey which must be prepared by a ~~registered engineer, registered landscape architect, or registered land surveyor~~ State of Michigan registered forester, arborist, or landscape architect; and

- (2) All regulated trees shall be numbered and marked in the field.

Sec. 126-361. – Departmental review.

- (a) *Generally.* The ~~department of~~ planning & economic development department shall review the submitted tree removal permit application to verify the applicant has provided all required information.
- (b) *Referral to appropriate departments.* Completed applications shall be referred by the planning & economic development department to other appropriate city departments and consultants for review and comment.
- (c) *Field inspection or review meeting.* The city may conduct a field inspection or review meeting.
- (d) *Results forwarded to reviewing authority.* City departments involved in the review shall submit their report and recommendations to the director of the ~~department of~~ planning & economic development department who shall forward them to the appropriate reviewing authority.

Sec. 126-362. – Decision to approve or deny.

- (a) *Standards.* The decision to approve or deny a tree removal permit shall be governed by the review standards enumerated in section 126-368.
- (b) *Site plans.* Where the site is proposed for development necessitating site plan, subdivision plat, or condominium plan review by the planning commission, the planning commission shall be responsible for approving or denying the application for a tree removal permit.
- (c) *Other.* Where neither site plan, subdivision plat, nor condominium plan review is required by city ordinance, the director of the ~~department of parks, forestry, and facilities and natural resources~~ department shall be responsible for approving or denying the application for a tree removal permit.

Sec. 126-363. – Notice.

Before the reviewing authority makes a decision on a tree removal permit application, notice of the tree removal permit application shall be sent by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the tree removal permit is requested, including property directly across public rights-of-way and easements. The notice shall be sent at least seven days before the reviewing authority is to make its decision and shall include a statement that interested persons may examine the application at the planning & economic development department or ~~parks, forestry, and facilities and natural resources~~ department. Where the planning commission's recommendation is required pursuant to section 126-362, notice to adjoining property owners shall be required before the planning commission meeting only.

Sec. 126-364. – Denial.

Whenever an application for a tree removal permit is denied, the permit applicant shall be notified, in writing, of the reasons for denial.

Sec. 126-365. – Approval.

Whenever an application for a tree removal permit is approved, the reviewing authority shall:

- (1) *Conditions.* Attach to the approval of the permit any reasonable conditions considered necessary by the reviewing authority to ensure the intent of this article will be fulfilled and to minimize damage to, encroachment upon, or interference with natural resources and processes within wooded areas; and
- (2) *Performance guarantee.* Require the permit grantee to file with the city a cash or corporate surety bond or irrevocable bank letter of credit in an amount, if any, necessary to guarantee compliance with tree removal permit conditions and this article.

Sec. 126-366. – Site plans, condominium plans and plats.

With respect to land which is the subject of a site plan, condominium plan, subdivision plat, or land division submitted to the city for approval, a tree removal permit shall not be effective nor shall the permit holder remove, cause to be removed, transplant, or damage any regulated tree until after both final approval of the site plan, condominium plan, preliminary subdivision plat, or land division and approval by the city engineer of construction and engineering plans for the proposed construction or development activity have occurred.

Sec. 126-367. – Duration.

Tree removal permits shall remain in effect for one (1) year or the duration of the approved site plan, preliminary subdivision plat, or condominium plan, if any, they relate to, whichever period is less.

Sec. 126-368. – Application review standards.

The following standards shall govern the approval or denial of an application for a tree removal permit:

- (1) *Preservation and conservation.* ~~No application shall be denied solely because some trees grow on the site. Nevertheless,~~ Tree preservation and conservation, especially with respect to trees designated as specimen or historic or landmark trees pursuant to division 43 of this article, shall be of paramount concern and importance.
- (2) *Developmental alternatives.* Preservation and conservation of wooded areas, trees, similar woody vegetation, wildlife and related natural resources and processes shall

have priority over development when there are feasible and prudent location alternatives on site for proposed buildings, structures, or other site improvements.

- (3) *Diversity of species.* Diversity of tree species shall be maintained where essential to preserving a wooded area.
- (4) *Quality of trees.* Quality trees shall be preserved whenever it is feasible to do so. In evaluating quality of trees, the reviewing authority shall consider the following:
 - a. Soil and habitat quality;
 - b. Tree species;
 - c. Tree size and density;
 - d. Health and vigor;
 - e. Understory size, density, quality, and type;
 - f. Wildlife presence; and
 - g. Other factors such as function as wind block, noise buffer, cooling or heating effect, and scenic value.
- (5) *Land clearing.* 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.
- (6) *Residential development.* 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.
- (7) *Compliance with statutes and ordinances.* The proposed activity shall comply with all applicable statutes and ordinances.
- (8) *Relocation or replacement.* The proposed activity shall include necessary provisions for tree relocation or replacement, in accordance with subdivision III of this division and tree protection, in accordance with subdivision IV of this division.
- (9) *Limitation.* Tree removal or transplanting shall be limited to instances where:
 - a. *Necessary for construction.* 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
 - b. *Disease, damage, etc.* The tree is diseased, damaged or in danger of falling; is located too close to existing or proposed buildings or structures; interferes

with existing utility service or drainage; creates unsafe vision clearance; or does not conform to other city ordinances or regulations.

- (10) ~~Historic and~~ Landmark trees. The removal of trees designated under this article as ~~historic or~~ landmark trees shall not be permitted where there is a reasonable alternative that would allow preservation of the trees.

Sec. 126-369. – Issuance; appeal of denial.

- (a) *Waiting period before issuing permit.* The city shall not issue a tree removal permit approved by the planning commission or director of the ~~department of parks, forestry, and facilities and natural resources~~ department until ten (10) calendar days following the approval. There shall be no waiting period relative to permits approved by the city council.
- (b) *Right of appeal.* Relative to the decision of the planning commission or the director of the ~~parks, forestry, and facilities and natural resources~~ department to approve or deny a tree removal permit, any person denied a tree removal permit or any aggrieved owner of property contiguous to property for which a tree removal permit has been approved, including property directly across public rights-of-way and easements, may appeal such decision to the city council as follows:
 - (1) *Time to appeal.* An appeal must be filed with the city clerk, in writing, within the ten (10)-calendar-day period following the approval or denial being appealed.
 - (2) *Issuance of permit suspended.* The timely filing of an appeal shall have the effect of suspending the issuance of a permit pending the city council's decision on appeal. The city council, upon review, may affirm, reverse, or modify the decision rendered by the planning commission or director of the ~~department of parks, forestry, and facilities and natural resources~~ department.

~~(c) *City council decisions.* A decision of the city council to approve or deny a tree removal permit is not appealable to the city council.~~

Subdivision III. – Tree Relocation or Replacement

Sec. 126-396. – Required.

A tree removal permit holder shall replace or relocate each regulated tree removed pursuant to a tree removal permit.

Sec. 126-397. – Basis for relocation or replacement credit.

The permit holder shall relocate or replace regulated trees removed pursuant to a tree removal permit on a one-for-one basis, subject to the following:

- (1) *Deciduous trees.* All deciduous replacement trees must measure two (2) inches in diameter or greater, measured at six (6) inches above ground. ~~However, for every additional one-half inch increment a replacement tree exceeds two inches in~~

diameter, the city shall credit the permit holder with having replaced an additional one-half of a tree.

a. ~~Example. For example, if the permit holder uses replacement trees measuring 2½ inches in diameter, for each replacement tree measuring 2½ inches in diameter the city shall credit the permit holder as having replaced 1½ trees.~~

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b. ~~Trees greater than three inches in diameter. If the permit holder uses replacement trees measuring three inches in diameter or greater, for each replacement tree measuring three inches in diameter or greater the city shall credit the permit holder as having replaced two trees.~~

(2) *Coniferous trees.* All coniferous replacement trees must measure eight (8) feet in height or greater. However, for every additional one-foot increment a replacement tree exceeds eight feet in height, the city shall credit the permit holder with having replaced an additional one-half of a tree.

a. ~~Example. For example, if the permit holder uses replacement trees measuring nine feet in height, for each replacement tree measuring nine feet in height the city shall credit the permit holder as having replaced 1½ trees.~~

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b. ~~Trees greater than ten feet in height. If the permit holder uses replacement trees measuring ten feet in height or greater, for each replacement tree measuring ten feet in height or greater the city shall credit the permit holder as having replaced two trees.~~

(3) *Specimen trees.* Replacement of Specimen trees shall be provided to a minimum of fifty (50) percent of the diameter at breast height of the tree to be removed. Replacement trees shall be provided either individually or on an accumulative basis to meet the fifty (50) percent diameter-at-breast-height requirement. For each specimen tree preserved; one 2" tree replacement credit shall be credited to the permit holder.

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a. *specimen trees include all trees that are 24 inches dbh and greater or all trees greater than or equal to the specific size as listed in the table below:*

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<u>COMMON NAME</u>	<u>BOTANICAL NAME</u>	<u>DBH (≥)</u>
<u>Fir</u>	<u>Abies spp</u>	<u>18"</u>
<u>Maple</u>	<u>Acer spp</u>	<u>18"</u>
<u>Horse Chestnut/Buckeye</u>	<u>Aesculus spp</u>	<u>18"</u>
<u>Serviceberry</u>	<u>Amelanchier</u>	<u>8"</u>

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Birch	Betula spp	18"
Blue Beech	Carpinus caroliniana	8"
Hickory	Carya spp	18"
Chestnut	Castanea spp	10"
Redbud	Cercis canadensis	8"
Dogwood	Cornus spp	8"
Hawthorn	Crataegus spp	12"
American Beech	Fagus grandifolia	18"
Ginkgo	Ginkgo bilboa	18"
Kentucky Coffeetree	Gymnocladus dioicius	18"
Witch Hazel	Hamamelis virginiana	8"
Walnut	Juglans spp	20"
Cedar, Red	Juniperus virginiana	12"
Larch/Tamarack	Larix spp	12"
Sweetgum	Liquidambar styraciflua	16"
Tulip Tree	Liriodendron tulipifera	18"
Magnolia	Magnolia spp	8"
Crabapple	Malus spp	12"
Black Gum	Nyssa sylvatica	12"
Hornbeam	Ostraya spp	8"
Spruce	Picea spp	18"
Pine	Pinus spp	18"
LondonPlane/ Sycamore	Platanus spp	18"
Black Cherry	Prunus serotina	18"

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Douglas Fir	Pseudotsuga menziesii	18"
Oak	Quercus spp	18"
Sassafras	Sassafras albidum	15"
Basswood/Linden	Tilia spp	18"
Arborvitae	Thuja spp	18"
Hemlock	Tsuga spp	18"

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(4) [A tree of a genus and/or species deemed to be nuisance by the city's parks and natural resources department, shall not be considered a specimen tree. A list of trees that the department deems to be a nuisance, due to its non-native, invasive qualities, for purpose of this division shall be kept on file in the parks and natural resources department.](#)

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Sec. 126-398. – Replacement tree requirements.

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- (a) *Quality.* Trees replaced under this subdivision shall have shade potential and other characteristics comparable to the removed trees, shall conform to the guidelines established in the most recent edition of the American Standard for Nursery Stock (ANSI Z60.1-1990), and must be approved by the city prior to planting.
- (b) *Planting and guarantee.* Replacement and relocated trees must be staked, fertilized, and mulched and shall be guaranteed by the tree removal permit holder to exhibit a normal growth cycle for at least one year following planting.
- (c) *Suggested and Prohibited tree species.* A list of suggested replacement and prohibited replacement tree species shall be kept on file in the ~~department of parks, forestry, and facilities~~ and natural resources department.

Sec. 126-399. – Replacement tree location.

- (a) *City approval required.* The city shall approve tree relocation or replacement locations in order to provide optimum enhancement, preservation, and protection of wooded areas. To the extent feasible ~~and desirable~~, trees shall be relocated or replaced on site and within the same general area as trees removed, but such trees shall not be relocated or replaced in the building envelope of a one-family residential lot or building site, nor shall such trees count towards landscape screening and buffer requirements of division 5 of article VIII of chapter 138.
- (b) *Relocation or replacement off site.* 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.

- (c) *City tree fund.* Where it is not feasible and desirable to relocate or replace trees on site or at another approved location in the city, the tree removal permit holder 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, as determined by the parks and natural resources department, that would otherwise be required. The city shall use the city tree fund for the purpose of maintaining and preserving wooded areas, tree restoration activities, removal of non-native, invasive tree species, parkland natural features stewardship, educational tree program material, and for planting and maintaining trees, ~~shrubs, and other plantings~~ within the city.

Sec. 126-400. — Exceptions.

- (a) ~~*Unplatted residential parcel.* For any unplatted residential parcel, trees located within the area of the footprint of only one proposed principal dwelling or any additions thereto and within thirty (30) feet around the dwelling or addition are not required to be relocated or replaced. Furthermore, trees located within any proposed driveway, utility or other site improvement necessary to support the principal dwelling or addition and the area within ten feet of any such improvement are also not required to be relocated or replaced.~~
- (b) ~~*Effect of other requirements.* The exception in subsection (a) of this section shall not be construed to waive or supersede any other requirement of this article, and the applicant must still obtain a tree removal permit.~~

~~Subdivision IV — Tree Protection During Construction~~

Sec. 126-426. – Placing materials near tree.

No person may conduct any construction or development activity within the drip line of any regulated tree not approved for removal, including but not limited to land clearing, grubbing, trenching, grading, or filling, nor shall any person place solvents, building material, construction equipment, soil deposits, or other harmful materials within the drip line unless authorized by the department of parks, forestry, and facilities and natural resources department.

Sec. 126-427. – Attachments to trees.

During construction or development activity, ~~no person~~persons shall not attach any device or wire to any regulated tree not approved for removal.

Sec. 126-428. – Identification and protective barrier.

Before development, land clearing, filling, or any other land alteration or activity for which a tree removal permit is required, the permit holder shall clearly mark by painting, flagging, or other approved method all trees to be removed and shall erect and maintain suitable barriers to protect remaining trees. Protective barriers must be inspected and approved by the city before the work begins. Protective barriers shall remain in place until the city authorizes their removal or issues a final certificate of occupancy, whichever occurs first. Wood, metal, or other approved material shall be utilized in the construction of barriers. Barriers are required for all trees not approved for removal, except for the following:

- (1) *Rights-of-way and easements.* Street rights-of-way and utility easements may be cordoned by placing stakes a minimum of fifty (50) feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of areas to be cleared.
- (2) *Large, separate areas.* Large property areas separate from the construction or land clearing area onto which no equipment will venture may also be cordoned off as described in subsection (1) of this section.

Sec. 126-429. – Protective barrier when no permit required.

With respect to construction or development activity for which no tree removal permit is required under this article but which, in the city's judgment, may adversely affect regulated trees located on or off site, the person conducting such activity shall erect and maintain a suitable protective barrier for such trees.

Sec. 126-430 – Tree care practices.

When cutting or removing trees, proper tree cutting and care practices shall be used to protect against the spread of oak wilt and other diseases.

~~DIVISION 43. – HISTORIC AND LANDMARK TREES~~

~~Sec. 126-456. – Nomination for historic trees.~~

~~Any person may nominate a tree within the city for designation as an historic tree based upon its age, type, size, or historical or cultural significance.~~

~~Sec. 126-457. – Review of nomination for historic trees by historic districts commission.~~

- ~~(a) Generally. Nominations for designation of an historic tree shall be considered by the historic districts commission. A copy of the nomination, which shall include supporting documentation, shall be referred to the historic districts commission for review.~~
- ~~(b) Nominee other than owner. Where the nomination is made by someone other than the owner of the property where the tree is located, the owner shall be notified in writing, by~~

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~~certified mail, at least seven days in advance of the time, date, and place that the historic districts commission will consider the designation.~~

~~(c) — Notice. The notice shall notify the owner that the designation of the tree as an historic tree will make it unlawful to remove or damage the tree absent the granting of a tree removal permit by the city. The notice shall further advise the owner that his agreement is necessary in order for the tree to be designated as an historic tree.~~

Sec. 126-458. — Designation of historic tree.

~~Provided the owner agrees with the designation of an historic tree, the historic districts commission may designate a tree as a historic tree upon determining that, because of one or more of the following unique characteristics, the tree should be preserved as an historic tree because the tree is:~~

- ~~(1) — Associated with a notable person or historic figure;~~
- ~~(2) — Associated with the history or development of the nation, the state, or the city;~~
- ~~(3) — Associated with an eminent educator or education institution;~~
- ~~(4) — Associated with art, literature, law, music, science, or cultural life;~~
- ~~(5) — Associated with early forestry or conservation;~~
- ~~(6) — Associated with native American history, legend, or lore; or~~
- ~~(7) — Has notable historic interest in the city because of its age, type, size, or historic association.~~

Sec. 126-459. — Effects of historic tree designation.

~~Upon designation of a tree as an historic tree, it shall be unlawful, subject to the exceptions in section 126-267, for any person to remove or damage the tree without first obtaining a tree removal permit.~~

Sec. 126-460. — Record of designation of historic trees; recorded notice.

~~The department of planning & economic development shall maintain a record of historic tree designations, and for every designation, the city shall record a notice with the register of deeds identifying the land and advising that the land contains a designated historic tree which is regulated under this division and which may not be removed without a tree removal permit.~~

Sec. 126-461. — Criteria for landmark trees.

~~All trees listed in the American Forestry Association's National Registry of Big Trees, the Michigan Botanist's Champion Trees of Michigan, or in the city's Big Tree Registry are considered landmark trees.~~

Sec. 126-462. – Removal of landmark trees.

Subject to the exceptions in section 126-267~~6~~⁶, a landmark tree shall not be removed without a tree removal permit.

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Sec. 126-463. – Replacement of landmark trees.

When landmark trees are permitted to be removed, replacement trees shall be provided to a minimum of ~~One hundred (50100)~~ percent of the diameter at breast height of the tree to be removed. Replacement trees shall be provided either individually or on an accumulative basis to meet the ~~One hundred (50100)~~ percent diameter-at-breast-height requirement.

DIVISION 4. – VARIANCE

Sec. 126-464. – Authority.

The city council may grant a variance from this article when undue hardship may result from strict compliance.

Sec. 126-465. – Notice.

- (a) Adjoining property owners. The city shall send notice of a request for a variance from this article by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the variance is requested, including property directly across public rights-of-way and easements.
- (b) Timing and content. The notice shall be sent at least seven days before the meeting at which the city council will consider the variance request and shall include a statement that interested persons may examine the application for a variance at the planning department.

Sec. 126-466. – Conditions.

In granting any variance from this article, the city council may prescribe conditions that it deems necessary or desirable for the public interest.

Sec. 126-467. – Findings.

Variance from this article shall not be granted unless the city council finds as follows:

- (1) There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.
- (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
- (3) The variance will further the objectives and policies of this article, this Code, the zoning ordinance in chapter 138, and the master land use plan.

Section 2. 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 3. Penalty. Except as otherwise provided therein, 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 \$500.

Section 4. 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 _____, 2019 following its publication in the *Oakland Press* on _____, 2019.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2019.

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 _____, 2019.

Tina Barton, Clerk
City of Rochester Hills