

THERE IS NO LEGAL OBJECTION TO THIS LEGISLATION IF AMENDED AS FOLLOWS:

1. In Section 4, at reserved Sections 133.11 and 133.12, strike both Sections in their entirety and insert:

"Section 133.11 Division of Urban Forestry

There is established a Division of Urban Forestry in the Department of Parks and Recreation which shall be administered and controlled by a Commissioner of Urban Forestry and subject to the provisions of the Charter and ordinances of the City, and to the direction of the Director of Parks and Recreation.

Section 133.12 Duties of the Commissioner of Urban Forestry

The Commissioner of Urban Forestry shall, with the approval of the Director of Parks and Recreation, appoint all officers and employees in his or her division. The Commissioner of Urban Forestry shall control and manage the removal of dead and hazardous trees; prevent unsafe conditions relating to tree growth; trim trees for clearance of streetlights, traffic signals and signs, pedestrian and vehicular traffic, and building clearance; remove overgrown tree roots that cause raised sidewalks, and overgrown tree lawns; develop, coordinate, and implement the City's tree canopy; and provide public information regarding the care of trees."

2. In Section 4, at new Section 133.40, lines 7 and 8, after "all aspects of" strike "the planting, maintenance, removal and disposal of trees,".

3. In Section 5, line 3, before the legislative history for Section 163.04, insert the following:

"Section 161.05, as amended by Ordinance No. 1121-18, passed December 3, 2018,";

in line 4, after the legislative history for Section 163.04, insert the following:

"Sections 341.05, 341.051, 341.052, 341.053, 352.05 and 352.06, as amended or enacted by Ordinance No. 1121-18, passed December 3, 2018,";

and in line 8, after the legislative history for Section 447.02, insert the following:

"Sections 509.14, 509.99, 510.04 as amended by Ordinance No. 1121-18, passed December 3, 2018,".

4. In Section 5, between before amended Section 163.04 insert the following new section:

"Section 161.05 Regulation of Environmental Changes; Certificate of Appropriateness

No person owning, renting or occupying property which has been designated a landmark or which is situated in a designated landmark district shall make any environmental change in such property unless a certificate of appropriateness has been previously issued by the Commission with respect to such environmental change. The following procedures shall apply to all alterations, demolitions, removals or constructions of such property in the City:

(a) Any application to the Department of Building and Housing for a building permit for an environmental change shall also be deemed an application for a certificate of appropriateness, and shall be forwarded to the Commission, together with copies of all detailed plans, designs, elevations, specifications and documents relating thereto, and, for any environmental change on one (1) or more acres of land, and for any environmental change to an apartment, townhome or condominium of four (4) or more units situated on any size parcel of land, a copy of a Tree Preservation Plan meeting the requirements set forth in Section 341.051, within seven (7) days after receipt of the application. An application for a certificate of appropriateness may be filed by the applicant directly with the Commission at the same time that an application for a building permit is filed or in lieu of filing for a building permit, if no building permit is required for the proposed environmental change. The Commissioner of ~~Park Maintenance and Properties~~ Urban Forestry or a designee shall review any Tree Preservation Plan and shall notify the Director of Building and Housing of approval or disapproval as set forth in Section 341.051. The general requirements of tree preservation in Section 341.052 shall apply to any person seeking to make an environmental change on one (1) or more acres of land, and to any person seeking to make an environmental change to an apartment, townhome or condominium of four (4) or more units situated on any size parcel of land.

(b) The Commission shall evaluate applications to determine whether or not the environmental change proposed by the applicant will adversely affect any significant historical or aesthetic feature of the property and to determine whether or not the environmental change proposed by the applicant is consistent with the spirit and purposes of this chapter.

(1) In evaluating applications for alterations or construction of property, the Commission shall consider the following standards created by the U.S. Department of the Interior:

A. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment;

B. The historic character of a property shall be retained and preserved. The removal of historic materials or alternation of features and spaces that characterize a property shall be avoided;

C. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical

development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken;

D. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved;

E. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved;

F. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence;

G. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;

H. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken;

I. New additions, exterior, alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment; and

J. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(2) In evaluating applications for demolition or removal of property, the Commission shall consider the following standards:

A. The architectural and historic significance of the subject building or structure;

B. The significance of the building or structure in contributing to the architectural or historic character of its environs;

C. In the case of a request to move a building or other structure, the relationship between the location of the subject building or structure and its overall significance;

D. The present and potential economic viability of the subject building or structure, given its physical condition and marketability;

E. If the demolition will remedy conditions imminently dangerous to life, health, or property, as determined in writing by the Department of Building and Housing, the Division of Fire or the Department of Public Health; and

F. The appropriateness of the proposed new structure or use and its impact on the surrounding community.

(c) If the Commission finds that the environmental change proposed by the applicant will not adversely affect any significant historical or aesthetic feature of the property and is appropriate and consistent with the spirit and purposes of this chapter, or will remedy conditions imminently dangerous to life, health or property, as determined in writing by the Department of Building and Housing or the Division of Fire or the Department of Public Health, then the Commission shall issue a certificate of appropriateness.

(d) If the Commission finds that the environmental change proposed by the applicant will adversely affect any significant historical or aesthetic feature of the property or is inappropriate or inconsistent with the spirit and purposes of this chapter, the Commission may either deny the application or delay action on the application. Any decision to delay action on the application shall be by mutual agreement of the Commission and the applicant and shall be for a period not to exceed six (6) months. During the delay period, the Commission shall conduct further investigation with regard to the proposed environmental change, conduct negotiations with the applicant and any other party in an effort to find a means of preserving the property, or explore alternatives to the proposed environmental change. The Commission may also investigate the feasibility of all available ways and means of preserving the improvement, including without limitation, inducing by contract or other consideration the creation of covenants restricting the use of property, leasing and subleasing the property for the purposes of preservation and acquiring by eminent domain or contract or conveyance all or any part of or interest in the property.

(e) At the end of the delay period, the Commission shall either approve or deny the application, or delay action. A decision to delay action, at the end of one (1) delay period, shall be by mutual agreement of the Commission and the applicant and shall be for a period not to exceed six (6) months. The Commission shall only agree to a second and final delay period if the Commission determines that this additional time period may be useful in securing an alternative to the proposed environmental change. At the end of the second and final delay period, the Commission shall either approve or deny the application for a certificate of appropriateness.

(f) Upon the issuance, denial or a delay in the issuance of a certificate of appropriateness, the Commission shall give written notices of the issuance, denial or delay in the issuance to the applicant and the Department of Building and Housing. The Commission shall provide written notice of the issuance, denial or delay in the issuance of a certificate of appropriateness to the applicant and the Department of Building and Housing within forty-five (45) days of the receipt by the Commission of an application from either the applicant or the Department of Building and Housing.

(g) If no action has been taken by the Commission on an application for a certificate of appropriateness to approve, deny or delay action within forty-five (45) days after such application has been received by the Commission, the certificate of appropriateness shall be deemed issued."

5. In Section 5, between amended Section 163.04 and 411.05, insert the following new sections:

Section 341.05 Administrative Procedures

The following procedures are established to govern the processing of applications for Building Permits subject to the regulations of this chapter.

(a) *Contents of Application.* In addition to meeting application requirements established in the Building Code and Zoning Code for Building Permit applications, applications governed by the provisions of this chapter shall include the following elements.

(1) Color photographs showing the subject property in the context of adjoining properties within two hundred fifty (250) lineal feet on either side of the subject property.

(2) Architectural drawings including elevation drawings and site plans for the construction or exterior alterations proposed, indicating design materials, colors, illumination, sign placement, and landscaping.

(3) In the case of a proposed demolition, a plan showing the proposed re-use of the property, including both interim and long-term reuse plans, if appropriate.

(4) Information indicating project elements that contribute to an environmentally sustainable development.

(5) A Tree Preservation Plan, if required, pursuant to this chapter.

(6) Other materials listed in guides that may be prepared by the staff of the City Planning Commission and provided to applicants.

(b) *Determination of Applicability and Transmittal to City Planning Director.* Upon receipt of an application for a Building Permit, the Director of Building

and Housing shall use the standards of Section 341.02 to determine whether the proposed action is governed by the provisions of this chapter. If it is determined that the action is governed by these provisions, the Director of Building and Housing shall promptly transmit the application to the Director of the City Planning Commission.

(c) *Transmittal to Local Design Review Advisory Committee.* Upon receipt of a complete application, the City Planning Director shall promptly transmit the application for review and recommendation by the Local Design Review Advisory Committee, as established in Section 341.06. Other required City reviews may be conducted concurrently, as appropriate. In the case of an application for an action that the City Planning Director deems to have no significant impact on the design or appearance of the property, the Director may approve the application administratively without referral to the Local Design Review Advisory Committee.

(d) *Standards for Review.* An application received pursuant to the provisions of this chapter shall be reviewed in accordance with the design guidelines of Section 341.07 and any supplemental guidelines adopted by the City Planning Commission for a particular district. A Tree Preservation Plan received pursuant to this chapter shall be reviewed by the Commissioner of Urban Forestry Park Maintenance and Properties in accordance with Section 341.051.

(e) *Local Design Review Committee Meeting and Action.*

(1) *Meeting.* The City Planning Director shall inform the applicant of the time and location of the Local Design Review Advisory Committee meeting at which the application will be considered. That consideration shall take place at the next regularly scheduled meeting of the Committee occurring at least five (5) days after acceptance of a complete application by the City Planning Director.

(2) *Action.* The Local Design Review Advisory Committee shall recommend either approval, approval with modifications or conditions, or disapproval of the application. The Committee may choose to postpone action in order to permit the applicant to prepare revisions if the applicant agrees to such postponement. If the applicant does not agree to a postponement, the Committee shall take action on the application at the meeting. The Committee shall provide a written record of its recommendation to the City Planning Commission.

(f) *City Planning Commission Meeting and Action.* After action by the Local Design Review Advisory Committee, or a failure to act at a meeting in accordance with the requirements of this section, the City Planning Director shall inform the applicant of the time and location of the City Planning Commission meeting at which the application will be considered. The City Planning Commission shall either approve or disapprove the application or approve the application with modifications or conditions. The Commission may choose to postpone action in order to permit the applicant to prepare revisions if the applicant agrees to such postponement. The Commission shall take action no later than forty-five (45) days after acceptance of a complete application by the City Planning Director unless the applicant has agreed to one (1) or more postponements, including agreed postponements in the Local Design Review Committee process.

(g) *Administrative Approval.* Pursuant to the "Rules of the City Planning Commission" regarding administrative approvals, the City Planning Director is authorized to act on behalf of the Commission in approving applications recommended for approval by the Local Design Review Advisory Committee and for applications that meet the standard stated in division (c) of this section. Use of the administrative approval procedure is not authorized in the case of applications for demolition or moving of buildings, other than for buildings that are deemed to be minor accessory structures. Generally, applications for development of new commercial or institutional buildings and for residential developments involving six (6) or more units shall not be approved without referral to the Local Design Review Advisory Committee and the City Planning Commission.

(h) *Exemptions.* No referral to the City Planning Commission or a Local Design Review Advisory Committee shall be required for projects approved under the City's Storefront Renovation Program. Such projects may be approved by the action of the City Planning Director subsequent to approval under the Storefront Renovation Program.

Section 341.051 Tree Preservation Plan Required

(a) For any development project that meets the criteria of Section 341.02 ("development project") and is situated on one (1) or more acres of land, and for apartment, townhome or condominium projects of four (4) or more units situated on any size parcel of land, a Tree Preservation Plan shall be submitted as part of the Building Permit application. The Tree Preservation Plan shall be approved by the Commissioner of Urban Forestry Park Maintenance and Properties ("Commissioner") or a designee before a Building Permit is issued. A Tree Preservation Plan is not required for single-family dwellings, two-family dwellings, and three-family dwellings or for any person, firm, or corporation demolishing a building or structure pursuant to a valid demolition permit issued under Chapter 3115 of this Code.

(b) The Tree Preservation Plan shall include: (1) the location, botanical name, dimension at breast height (DBH), and vertical height of all existing trees on the property; (2) the intent to preserve, relocate, or replace each tree; (3) measures to be taken to protect new and mature trees during construction, and to protect roots and soil during construction, following *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time; and (4) any other information the Commissioner or a designee requires to determine compliance with this chapter. The Tree Preservation Plan shall be adhered to during all phases of construction on any development project for which a Tree Preservation Plan is required.

(c) The Commissioner or designee shall review all Tree Preservation Plans and notify the City Planning Director of approval or disapproval within thirty (30) business days of submittal of the Tree Preservation Plan. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant. The notice shall specify the modifications, terms and conditions that are necessary for approval of the plan. The Commissioner or

designee may make periodic inspections of trees within the development site to ensure compliance with this chapter. If the Commissioner does not approve or disapprove the Tree Preservation Plan within thirty (30) business days of its submittal, the Tree Preservation Plan is deemed approved.

Section 341.052 Tree Preservation General Requirements

The following are basic provisions for the preservation of private and public trees during construction of development projects on one (1) or more acres of land, for apartment, townhome or condominium projects of four (4) or more units situated on any size parcel of land, and for protecting public trees under Section 509.14.

(a) All trees with a DBH of over six (6) inches shall be preserved, maintained and protected during construction, a tree's roots shall be protected, and the size of the Tree Protection Zone shall be, in accordance with *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time.

(b) Trees on the property shall not be removed without prior written approval from the Commissioner of ~~Urban Forestry Park Maintenance and Properties~~ ("Commissioner") or a designee and only if one (1) or more of the following situations apply:

(1) The tree poses a risk. To verify that a risk exists, the City may require a tree risk assessment be performed by the Commissioner or designee or an International Society of Arboriculture (ISA) Certified Arborist with the ISA qualification.

(2) The tree is planted too close to an existing structure, such that it is either damaging or has the clear potential to damage the structure.

(3) The tree inhibits an infrastructure repair due to its proximity to the needed infrastructure repair. Trees should not be removed simply because a sidewalk is raised or cracked, unless it is determined that removal of the tree is necessary for the sidewalk repair.

(4) The tree has structural defects (e.g., split trunk, poor branch attachments), is damaged to the point that it cannot recover and grow properly, or that it will grow in a misshapen or unsightly manner that could result in failure.

(5) The tree is infested with an epidemic insect or disease where the recommended control is not applicable and removal is necessary to prevent transmission of the insect or disease to other trees. The City may require this condition to be verified by the Commissioner or designee or an ISA-Certified Arborist.

(6) The Commissioner or a designee determines that the removal of the tree is necessary to carry out construction in compliance with approved plans.

(c) A person, firm or corporation may appeal the decision whether to remove a tree under division (b) to the Commissioner within ten (10) business days of the date of the notice of the decision. The Commissioner shall have jurisdiction to affirm, reverse or modify the decision and shall do so within ten (10) days of the date of the appeal. A person aggrieved by a final decision of the Commissioner may further appeal to the Board of Zoning Appeals within thirty (30) days after the Commissioner's decision.

(d) A tree that is removed shall be replaced with a tree of appropriate species as selected by the Commissioner or designee and in a location where it will grow to replace the removed tree without posing the risks for which the tree was removed. Instead of replacing a tree removed pursuant to this section, a developer may pay the City the value of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication. All funds collected pursuant to this division shall be deposited in the Tree Preservation Fund established under Chapter 509 of the Codified Ordinances.

Section 341.053 Civil Penalties for Damaged Trees or Trees Removed Without Approval

(a) Any person, firm, or corporation required to submit a Tree Preservation Plan that damages a tree located in the development site, due to the failure to properly protect or maintain the tree during construction pursuant to Section 341.052, whether by negligence or otherwise, shall be charged one thousand dollars (\$1,000.00) per area of damage to the above ground portion of the tree. If the damage can be repaired or reduced following *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time, the party responsible for the damage shall hire an ISA-Certified Arborist to repair or reduce the damage at the cost of the responsible party. If the damage to the tree is adequately repaired by the ISA-Certified Arborist, in the discretion of the Commissioner of ~~Urban Forestry Park Maintenance and Properties~~ ("Commissioner") or designee, the Commissioner may waive the civil fine.

(b) Any person, firm, or corporation required to submit a Tree Preservation Plan that harms a tree within the development site by failing to properly protect the roots in violation of Section 341.052 or division (e) of Section 352.05, such that an ISA-Certified Arborist believes the tree will fall or decline and die within two (2) calendar years of the date of completion of construction, shall be charged the full value of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication.

(c) Any person, firm or corporation required to submit a Tree Preservation Plan that removes any tree located in the development site in violation of Section 341.052, shall be charged a civil fine of one thousand dollars (\$1,000.00) for

each tree removed in addition to the full cost of any removed tree based on the replacement cost of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication.

(d) The Commissioner or a designee shall have the authority to charge the civil fines set forth in this section. All civil fines and costs collected pursuant to this section shall be deposited in the Tree Preservation Fund established under Chapter 509 of the Codified Ordinances.

(e) A person, firm or corporation required to submit a Tree Preservation Plan that receives a civil fine under this section may appeal to the Commissioner within ten (10) business days of the date of the notice of the civil fine. The Commissioner shall have jurisdiction to affirm, reverse, or modify the decision and shall do so within ten (10) days of the date of the appeal. A person aggrieved by a final decision of the Commissioner may further appeal to the Board of Zoning Appeals within thirty (30) days after the Commissioner's decision.

Section 352.05 Requirements for All Landscaped Areas

(a) *Permitted Forms of Screening.* Screening required in item 2 of the table contained in Section 352.11 and the Screen Barrier required in the table contained in Section 352.10 may take the form of:

- (1) A landscaped earthen berm;
- (2) A concrete or masonry wall;
- (3) A wood, wrought iron, tubular steel, or similar decorative fence as approved by the Director of the City Planning Commission as compatible with the character of the area in which the fence is to be placed;
- (4) A compact hedge or other live evergreen vegetative barrier; or
- (5) A combination thereof.

Fences and walls used to meet screening requirements shall display a finished face toward adjacent streets and properties.

(b) *Types of Landscaping Materials.* As determined by the Commissioner of Park Maintenance and Properties, or the Commissioner of Urban Forestry, as appropriate, ("Commissioner") or a designee, or in accordance with standards promulgated by the appropriate Commissioner or designee, all varieties of living landscape materials used shall be:

- (1) Healthy, hardy, and drought-resistant consistent with the availability of water for artificial irrigation; and

(2) Suitable for the climate and environmental influences on the site, such as exposure to sun, wind, water, heat, automobile exhaust fumes, and road salt; and

(3) Compatible with the slope of the site, with existing vegetation to be preserved and with utility lines above or below ground level; and

(4) Tree selection shall be based on recommended species in the Cleveland Tree Plan as it may be amended from time to time.

(c) *Ground Cover In Landscaped Strips.* Grass or other ground cover shall be planted over all landscaped strips including earthen faces of berms, except in areas planted in flowers, shrubs, or trees, so as to present a finished appearance and reasonably complete coverage within three (3) months after planting.

Non-living landscaping materials such as sand, stones, rocks, or barks may be substituted for living cover over a maximum of thirty percent (30%) of the landscaped area. No artificial plants or turf shall be used.

(d) *Preservation of Landscaping.*

(1) *Credit Toward Requirements.* The Director of Building and Housing, in consultation with the Commissioner of Park Maintenance or the Commissioner of Urban Forestry, as appropriate, or designee, shall credit healthy trees or shrubs existing on a site prior to development and proposed to be preserved toward the requirements of the table contained in Section 352.11.

Except as provided herein for bonus credits, each preserved tree or shrub meeting the applicable requirements of the table contained in Section 352.11 shall reduce by one (1) the number of new trees or shrubs required.

(2) *Bonus Credit for Larger Trees.* Larger preserved trees shall reduce the number of new trees required in the table contained in Section 352.11 as follows:

<u>Trunk Caliper of Existing Tree to be Preserved*</u>	<u>Reduction in Number of New Trees Required</u>
<u>8 - 16 inches</u>	<u>2 trees</u>
<u>Over 16 inches</u>	<u>3 trees</u>

* Measured 4.5 feet above grade at base.

(e) *Tree Protection During Construction.* An applicant may claim a credit for preservation of existing trees and shrubs under division (d) of this section, and shall certify that all trees and shrubs for which a credit is claimed are currently healthy. An applicant shall adhere to the requirements of this section with respect to all trees on the site, including the trees for which the credit is claimed.

(1) Tree protection during construction, including bark and root protection, shall be according to *Best Management Standards and ANSI Standards for Arboriculture* as may be amended from time to time.

(2) *Damage Mitigation.* Despite following *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time, significant damage has been done to the roots, the tree may need to be removed based on the assessment by the Commissioner of Urban Forestry or a designee. In this case, the owner shall replace the tree with a tree or trees of equal or greater diameter that are approved by the Commissioner of Urban Forestry or a designee, or the owner shall make payment to the City's Tree Preservation Fund for the replacement cost of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication.

Tree limbs damaged during construction shall be addressed following *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time.

(3) *Removal of Barriers.* Protective fences and barriers around trees shall be removed only as the final stage of post-construction cleanup.

(f) *Berming.* Berms used for screening shall be a minimum of two (2) feet high at all points. The interior face of a berm may be retained by a wall, terrace, or other means acceptable to the Director of Building and Housing in lieu of taking the form of an earthen slope.

All earthen berm faces on which ground cover is not yet completely established shall be protected from erosion by a mulch and/or an erosion control net.

Slopes for earthen faces shall not exceed thirty- three percent (33%) if covered with grass and fifty percent (50%) if covered with other vegetative cover.

(g) *Curbing.* All landscaped strips located in or abutting parking areas shall be separated on all sides from the parking surface by curbing consisting of concrete, stone, brick, asphalt, or other material approved by the Director of Building and Housing as having comparable appearance and durability. Curbing shall be in good condition upon installation.

(h) *Other.* Other requirements shall be as specified in the table contained in Sections 352.11.

Section 352.06 Installation and Maintenance

(a) Assurance of Installation. Before issuing any Certificate of Occupancy for any application to which the provisions of this chapter apply, the Director of Building and Housing shall determine that either:

(1) Landscaping and screening required in this chapter have been fully installed; or

(2) If seasonal or weather conditions or other factors preclude such installation at the time of application, that financial sureties have been submitted to guarantee installation within nine (9) months of the date of issuance of the certificate.

Financial sureties shall be in the form of a performance bond, letter of credit, cash or property escrow, or other form approved by the Director of Building and Housing. They shall be in the amount of one hundred ten percent (110%) of the estimated cost of the materials and their installation based on figures approved by the ~~Commissioner of Park Maintenance and Properties ("Commissioner")~~ Director of Parks and Recreation or a designee.

(b) Installation Procedures. All tree materials shall be installed in conformance with the most current procedures established by *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time. All other living landscaping materials shall be installed in conformance with the most current procedures established by the American Association of Nurserymen or its successor organization. A permanently-installed underground irrigation system shall be provided for a required landscape area if it is determined by the Commissioner of Urban Forestry or a designee that such irrigation is required for proper maintenance of the type of landscape materials proposed for installation.

(c) Maintenance and Replacement. The owner, occupant, tenant, and agent of each, if any, shall be jointly and severally responsible for the maintenance, repair, and replacement of all landscaping, screening, and curbing required under this chapter so as to preserve at least the same quantity, quality, and screening effectiveness as initially installed.

A preserved existing tree that dies or is destroyed shall be replaced by:

(1) A replacement tree or trees of equal or greater diameter approved by the Commissioner of Urban Forestry or a designee;

(2) The trees recommended in the Cleveland Tree Plan as it may be amended from time to time; or

(3) The owner may make payment into the City's Tree Preservation Fund for the replacement cost of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication.

All living and non-living landscaping, including fences, walls, and ornamental lighting, shall be maintained in a good condition at all times so as to present a healthy, neat, and orderly appearance and shall be kept free from refuse and debris.

Any unhealthy or dead vegetation shall be replaced with healthy living plantings no later than the end of the next applicable planting season.

(d) *Removal.* Installed landscaping and screening may not be removed except temporarily for replacement or maintenance unless the zoning of an abutting parcel is changed to a district that does not require a Transition Strip or unless any other condition that mandates landscaping or screening hereunder no longer applies to the property."

6. In Section 5, between amended Section 447.02 and 557.07, insert the following new sections:

"Section 509.14 Protecting Trees During Construction

(a) No person in charge of the erection, repair, alteration or removal of any building or structure within the City shall fail to properly preserve, maintain, and protect, pursuant to the general requirements of Section 341.052, public trees that are in the vicinity of the building or structure from damage that may be caused by or may be a result of the erection, repair, alteration or removal of the building or structure.

(b) No person in charge of the erection, repair, alteration or removal of any building or structure within the City shall remove any public tree in the vicinity of the building or structure without prior written approval of the Commissioner of Urban Forestry Park Maintenance and Properties or a designee and then only if one (1) or more of the situations under division (b) of Section 341.052 apply.

Section 509.99 Penalty

(a) Any person, firm or corporation which violates Sections 509.01, 509.05, 509.09, or 509.11 shall be fined not more than one hundred dollars (\$100.00) for each offense.

(b) Any person, firm or corporation which violates Sections 509.03, 509.06, 509.08, 509.12 or 509.13 shall be fined not more than five hundred dollars (\$500.00) for each offense.

(c) Any person, firm or corporation which violates Sections 509.02, 509.04 or 509.10 shall be fined not more than one thousand dollars (\$1,000.00) for each offense.

(d) *Civil Penalties.*

(1) Any person, firm, or corporation that fails to properly preserve, maintain, and protect a public tree during construction as required under division (a) of Section

509.14, shall be charged one thousand dollars (\$1,000.00) per area of damage to the roots or the above ground portion of the tree. If the damage can be repaired or reduced following *Best Management Standards and ANSI Standards for Arboriculture*, as may be amended from time to time, the party responsible for the damage shall hire an ISA-Certified Arborist to repair or reduce the damage at the cost of the responsible party. If the damage to the tree is adequately repaired by the ISA-Certified Arborist, in the discretion of the Commissioner of Urban Forestry ("Commissioner") or designee, the Commissioner may waive the civil fine.

(2) Any person, firm, or corporation that removes any public tree in violation of division (b) of Section 509.14 shall be charged a civil fine of one thousand dollars (\$1,000.00) for each tree removed in addition to the full cost of the removed tree based on the replacement cost of the tree as established using the Trunk Formula Method outlined in *The Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication.

(3) The Commissioner of Park Maintenance and Properties ("Commissioner") or designee shall have the authority to charge the civil fines set forth in division (d) of this section. All civil fines collected pursuant to this division (d) shall be deposited in the Tree Preservation Fund.

(e) Every violation by the same person, firm or corporation of Sections 509.01 to 509.13 which continues on any day succeeding the first violation, constitutes an additional violation for each of such succeeding days.

(f) In addition to civil liability for the cost of any work performed by the Commissioner or designee, any person who fails to comply with an order of the Commissioner to trim, preserve or remove any dead or diseased tree, or branch or limb of the dead or diseased tree, dangerous to person or property or to prevent the spread of disease to trees upon public property or streets within the time specified in the order shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty (30) days, or both.

(g) A person, firm or corporation that receives a civil fine under division (d) of this section may appeal to the Commissioner within ten (10) business days of the date of the notice of the civil fine. The Commissioner shall have jurisdiction to affirm, reverse, or modify the decision and shall do so within ten (10) days of the date of the appeal. A person aggrieved by a final decision of the Commissioner may further appeal to the Board of Zoning Appeals within thirty (30) days after the Commissioner's decision.

Section 510.04 General Public Right-of-Way Use Regulations

(a) Public Right-of-Way Route. A completed initial and annual registration of a Service Provider to Occupy or Use the Public Right-of-Way under Sections 510.02 and 510.03 shall apply to only the types of Facilities and locations along the Public Right-of-Way that were identified by the Service Provider in the registration form.

(b) Nonexclusive Right to Occupy the Public Right-of-Way. Registration of a Service Provider granted under Sections 510.02 and 510.03 shall not confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. Registration of a Service Provider under Sections 510.02 and 510.03 shall not convey any right, title or interest in the Public Right-of- Way.

(d) Maintenance of Facilities. Each Service Provider shall maintain its System and Facilities in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(e) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as necessary and under applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of the work in or affecting such Public Right-of-Way or property.

(f) Interference with the Public Rights-of-Way. No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other Persons authorized to use or be present in or on the Public Right-of-Way. To the extent permitted by law, all Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the Director.

(g) Damage to Public and Private Property. No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any City Property, including trees, Public Right-of-Way, Other Ways or other public or private property located in, on or adjacent thereto.

(h) Restoration of Public Right-of-Way, Other Ways and City Property.

(1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way, Other Ways or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions and restore such ways or property, within ten (10) to sixty (60) days, at the Director's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(2) If weather or other conditions do not permit the complete restoration required by this section, the Service Provider shall temporarily restore the affected ways or property as directed by the Director, to the extent practical or feasible. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent permanent restoration.

(i) Duty to Provide Information.

(1) Within ten (10) days of a written request from the Director each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this chapter.

(2) Within ten (10) days of a written request from the Director, each Service Provider shall make available for inspection by the City at reasonable times all books, records, maps and other documents, maintained by the Service Provider with respect to its Facilities in the Public Right-of-Way.

(3) A Service Provider operating under a tariff issued by the PUCO shall cooperate with the City upon request of the Director for assistance with the "design ticket" process of the Ohio Utility Protection Service.

(j) Assignments or Transfers. Registration to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the City, so long as:

(1) The City is notified of the proposed transfer on or before the date of transfer or upon approval of any jurisdictional agency, including the PUCO; and

(2) The transferee shall fully comply with this chapter within sixty (60) days of the transfer, including, but not limited to, providing:

A. All information required by the Registration to Occupy or Use the Public Right-of-Way under Sections 510.02 and 510.03; and

B. Any other information reasonably required by the Director.

(k) Transactions Affecting Assignments or Transfers. Any transactions that singularly or collectively result in a change of twenty-five percent (25%) or more of the ownership or ultimate working control of a Service Provider, of the ownership or working control of the Service Provider's Facility, or of control of the capacity or bandwidth of the Service Provider's System, Facilities or substantial parts of the Facility shall be considered an assignment or transfer under division (j) of this section. Transactions between Affiliated entities are not exempt from division (j) of this section.

(l) Revocation of Registration. To the extent permitted by law, a Service Provider's registration to Occupy or Use the Public Right-of-Way of the City may be revoked for any one (1) of the following reasons:

(1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location;

(2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements;

(3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any permit application or registration required by the City;

(4) Failure to relocate or remove Facilities, or failure to restore the Public Right-of-Way, as required by this chapter;

(5) Failure to pay fees, costs, taxes or compensation when and as due the City;

(6) Insolvency or bankruptcy of the Service Provider;

(7) Violation of material provisions of this chapter.

(m) Notice and Duty to Cure. In the event that the Director believes that grounds exist for revocation of a Service Provider's registration to Occupy or Use the Public Right-of-Way, the Director shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance; and/or

(3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(n) It is within the Director's reasonable discretion to waive a portion or portions of this chapter where the requirements, in the Director's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this chapter.

(o) Record Drawings. Within sixty (60) days after completion of Construction, registered Service Providers shall furnish the City with the following information for Facilities Constructed for the Service Provider in detail acceptable to the Director based on consultation with the Service Provider:

(1) The location, size, depth, grade, and route of any Underground Facilities, including proximity to other existing Facilities within the area excavated for the Construction;

(2) The location, height and route of any Overhead Facilities, including pole attachments;

(3) The location and position of any Above Ground Facilities and evidence of an AGF Installation Permit issued under Section 510.06 for the Facilities.

Information supplied under division (o) of this section shall be submitted in an electronic format which is available to the Service Provider and acceptable to the Director, or, if an acceptable electronic format is not available, on paper.

(p) Field Identification. Commencing on January 1, 2008, Service Providers shall field identify in a readily available location by means of a mark or tag in a manner, form and at such time as is acceptable to the Director in accordance with national and state standards and regulations, all new or replacement Facilities constructed or installed at the surface of the Public Right-of-Way and, in conjunction with Public Right-of-Way improvements constructed by the City, all existing Facilities owned by a Service Provider and located on the surface of the portion of the Public Right-of-Way to be improved by the City.

(q) Restoration of Improvements. On completion of any Construction work, registered Service Providers shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures and Facilities which were damaged during the course of Construction, restoring the same as nearly as practicable to its condition before the start of Construction.

(r) Trees in Public Right-of-Way; Cost of Replacement.

(1) In performing any Construction work that may impact trees with roots, trunk or branches within the Public Right-of-Way, the Service Provider shall follow Best Management Standards and ANSI Standards for Arboriculture as may be amended from time to time.

(2) When tree roots must be affected by any Construction work within the Public Right-of-Way, the Service Provider shall submit specifications with the permit or construction plans and shall follow guidelines in Best Management Standards and ANSI Standards for Arboriculture as may be amended from time to time. The Commissioner of ~~Park Maintenance and Properties~~ Urban Forestry ("Commissioner") or a designee shall review and approve the specifications prior to commencement of Construction work.

(3) A Service Provider that damages a tree located in Public Right-of-Way, due to the failure to properly protect or maintain the tree during Construction as required under division (r)(1), whether by negligence or otherwise, shall be charged one thousand dollars (\$1,000.00) per area of damage to the roots or the above ground portion of the tree. If the damage can be repaired or reduced following Best Management Standards and ANSI Standards for Arboriculture, as may be amended from time to time, the Service Provider shall hire an ISA-Certified Arborist to repair or reduce the damage at the Service Provider's cost. If the damage to the tree is adequately repaired by the ISA-Certified Arborist, in the discretion of the Commissioner or designee, the Commissioner may waive the civil fine. The civil fines shall be deposited into the City's Tree Preservation Fund.

(4) Trees within the Public Right-of-Way may not be removed without prior consultation with the Commissioner or a designee. Best Management Standards and ANSI Standards for Arboriculture, as may be amended from time to time, shall be utilized when removing trees from the Public Right-of-Way. Compensation for trees removed in connection with Construction work performed by a Service Provider, based upon the replacement cost of the tree as established using the Trunk Formula Method outlined in The Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication, shall be paid to the City's Tree Preservation Fund prior to completion of Construction work. A Service Provider shall not be required to compensate the City for trees removed at the City's request.

(5) The Commissioner or designee shall have the authority to charge the civil fines and replacement costs as set forth in this division. Civil fines under this section may be appealed to the Commissioner within ten (10) business days of the date of the notice of the civil fine. The Commissioner shall have jurisdiction to affirm, reverse or modify the decision and shall do so within ten (10) days of the date of the appeal. A Service Provider aggrieved by a final decision of the Commissioner may further appeal to the Board of Zoning Appeals within thirty (30) days after the Commissioner's decision.

(s) Landscape Restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the Construction, Reconstruction, installation, maintenance, repair, replacement, or removal of Facilities must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work as determined by the Commissioner or a designee, except to the extent that tree trimming is necessary to prevent the interference of tree branches with Overhead Facilities. Except in the case of emergency, trees within the Public Right-of-Way shall not be pruned without prior notice to the Commissioner or a designee. Best Management Standards and ANSI Standards for Arboriculture, as may be amended from time to time, shall be utilized when pruning trees in the Public Right-of-Way. Any Service Provider that fails to prune a tree using Best Management Standards and ANSI Standards for Arboriculture, as may be amended from time to time, such that the tree is damaged, as determined by the Commissioner or designee, shall be fined the full replacement cost of the tree as established using the Trunk Formula Method outlined in The Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication, which shall be paid to the City's Tree Preservation Fund. If trees are damaged during Construction, Reconstruction, installation, maintenance, repair, replacement, or removal of Facilities, such that an ISA-Certified Arborist determines that the tree will fall or decline and die as a result of the damage, the Service Provider shall pay compensation to the City's Tree Preservation Fund based upon the replacement cost of the tree as established using the Trunk Formula Method outlined in The Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree

replacement analysis provided by similar publication. If, in the opinion of the Commissioner or a designee, any trees cannot be replaced or restored in the same location, then either: (A) an equal number of trees, the type(s) of which shall be approved by the Commissioner or a designee, shall be planted in the Public Right-of-Way at a location or locations determined by the Commissioner or a designee; or (B) the Service Provider shall pay to the City's Tree Preservation Fund the replacement cost based on the Trunk Formula Method outlined in The Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers, as may be amended from time to time, or other tree replacement analysis provided by similar publication, for an equal number of trees. The Commissioner or designee shall have the authority to charge the replacement cost as set forth in this division.

(2) All restoration work within the Public Right-of-Way shall be done under landscape plans approved by the Director.

(t) Responsibility of Owner. The owner of the Facilities to be Constructed, Reconstructed, installed, located, operated, maintained or repaired and, if different, the Service Provider, are responsible for performance of and compliance with all provisions of this section."

7. In Section 5, line 3, before the legislative history for Section 163.04, insert the following:

"Section 161.05, as amended by Ordinance No. 1121-18, passed December 3, 2018,";

in line 4, after the legislative history for Section 163.04, insert the following:

"Sections 341.05, 341.051, 341.052, 341.053, 352.05 and 352.06, as amended or enacted by Ordinance No. 1121-18, passed December 3, 2018,";

and in line 8, after the legislative history for Section 447.02, insert the following:

"Sections 509.14, 509.99, and 510.04, as amended by Ordinance No. 1121-18, passed December 3, 2018,".

8. In Section 7, line 3, after "Divisions of" insert "Urban Forestry,".

Date: _____ (Signed): _____

Stephanie Melnyk
Chief Corporate Counsel

Ord. No. 521-2024