

# Ordinance No. 1121-18

Council Members Zone, McCormack and Brancatelli

## AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland Ohio, 1976 by enacting new Sections 341.051, 341.052, 341.053, and 509.21, and by amending Sections 341.05, 352.05, 352.06, 3115.04, 509.14, 509.99, and 510.04, as amended by various ordinances, related to tree preservation and tree protection during construction and by service providers in the public right-of-way, civil penalties for damaged and removed trees, and establishing a Tree Preservation Fund.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances are supplemented by enacting new Sections 341.051, 341.052, 341.053, and 509.21 to read as follows:

Section 341.051      Tree Preservation Plan Required

(a) For any development project 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 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

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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 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, because the removal of the tree will not repair the damage.

(4) The tree has structural defects (eg., 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.

(7) A person, firm or corporation may appeal the decision whether to remove a tree to the Commissioner within 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 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.

(c) 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 reimburse 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.

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## 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 (\$1000.00) 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 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 \$1,000 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 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 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 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 509.21      Tree Preservation Fund

The Director of Finance shall establish a Tree Preservation Fund for the purpose of supporting the preservation, protection, maintenance, purchase and planting of trees in the City. Civil fines and funds collected as a result of damage to trees or removal of trees in violation of, or to adhere to, applicable sections of this Code, shall be deposited in the Tree Preservation Fund for disbursement as set forth in this section.

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Section 2. That the Codified Ordinances are supplemented by amending Section 341.05 of the Codified Ordinances, as amended by Ordinance No. 1827-08, passed February 9, 2009, Sections 352.05 and 352.06, as amended by Ordinance No. 3077-A-89, passed June 17, 1991, Section 3115.04 as amended by Ordinance No. 799-90, passed June 18, 1990, Section 509.14, as enacted by Ordinance No. 63410-A, passed September 22, 1924, Section 509.99, as amended by Ordinance No. 2096-66, passed December 12, 1966 and Section 510.04, as amended by Ordinance No. 1242-A-07, passed October 8, 2007 to read as follows:

## 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.

~~(5)~~ (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.

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(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 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.

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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 ~~Parks and Urban Forestry~~ Park Maintenance and Properties (Commissioner) or a designee, or in accordance with standards promulgated by ~~said the~~ the 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. ~~Not prone to cause a nuisance within the public right-of-way as a result of dropping fruit or debris other than leaves. Where vulnerable to damage, materials shall be protected from pedestrian or vehicular traffic by grates, pavers or other measures.~~

(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 Commissioner~~ Director of Building and Housing, in consultation with the Commissioner or designee, shall credit healthy trees

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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:

| Trunk Caliper of Existing Tree to be Preserved* | Reduction in Number of New Trees Required |
|---|---|
| 8 - 16 inches                                   | 2 trees                                   |
| Over 16 inches                                  | 3 trees                                   |
| * Measured 4.5 feet above grade at base.        |   |

~~(e) *Tree Protection During Construction.* An applicant claiming may claim a credit for preservation of existing trees and shrubs under division (d) of this section, Section 352.05 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. shall file with the Commissioner of Park and Urban Forestry a written statement certifying that all trees and shrubs are currently healthy and that the requirements of division (e) of Section 352.05 will be adhered to with respect to 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.~~

~~(1) *Mechanical and Chemical Injury.* Because mechanical injuries to trees intended to be preserved can be caused by soil compaction, unnecessary cutting of roots, fire, collisions with heavy equipment, carelessness with tools, and girdling with guy wires, and chemical injury caused by solvents, thinners, paints, oils, and other materials, protective barriers are required as described herein.~~

~~A. *Enclosure of Drip Line Area.* A fence, roping, flagging, or other protective barrier shall enclose the area within the drip line or lines, and any exposed roots outside of such line or lines, of each tree or group of trees proposed for preservation. Such barrier shall be visible enough to be seen easily by equipment operators.~~

~~Removal of brush and weeds within this barrier shall be performed with hand tools only. To avoid chemical damage to trees, equipment shall not be cleaned within the barrier.~~

~~No equipment materials, fill, or debris shall be stored within the barrier except as may be necessary for a reasonable time if no other storage area is available.~~

~~B. *Bark Protection.* Trunks of trees to be preserved that surround the immediate building site and border access roads shall be wrapped with sections of snow fence or boards wired together.~~

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No nails or spikes shall be driven into trees to be preserved, nor shall such trees be used for signs, fencing, roping, or cables.

(2) *Grade Changes.* Because changing the grade of the land surrounding a tree can impair the ability of its roots to obtain necessary amounts of air, water, and land minerals, protective measures shall be taken as specified in this division.

A. *Raising of Grade.* Before the grade of the land around a tree to be preserved is raised by land filling, the party undertaking the grading shall:

1. Install an aeration system consisting of a dry well around the trunk together with a layer of gravel and stone and a system of drain tiles over the root system at the level of the original grade. Such system shall be configured to provide, in the judgment of the Commissioner of Park and Urban Forestry, adequate air and water circulation and drainage of water away from the trunk; or

2. If an aeration system is impractical or financially infeasible, take other measures approved by the Commissioner of Park and Urban Forestry to protect the tree.

B. *Exemption.* Fills are exempt from the requirements of this division if they:

- 1. Are six (6) inches or less in depth; and
- 2. Consist only of porous, loamy, or gravelly soil high in organic matter; and
- 3. Do not contain clay, marl, or other heavy, impervious fills of any depth.

C. *Lowering of Grade.* To protect trees intended to be preserved from removal of or damage to feeder roots or changes to the water table, the area within the drip line shall be separated from the lowered grade by either terracing or, for grade differences of less than two (2) feet, construction of a dry retaining wall.

(3) *Excavations.*

A. *Location.* Excavations for utility pipelines shall be routed within the drip line of a tree to be preserved only if in the judgment of the Commissioner Parks and Urban Forestry:

- 1. No other route for the lines bypassing the root area is practical; and
- 2. Tunneling under the roots with a power driven soil augur is impractical or financially infeasible in relation to the value of the tree.

B. *Root Protection.* Parties excavating within the root area shall:

- 1. Minimize the number of roots cut, especially of large main roots; and
- 2. Cleanly cut with proper tools such roots as must be cut and retrim them after excavation; and



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~~3. Paint cuts of roots of one fourth (1/4) inch diameter or larger with a wound dressing like orange shellac or asphalt-based paint; and~~

~~4. Backfill the trench as soon after excavation as possible to minimize the time roots are exposed to the air; and~~

~~5. Leave no pockets of air when back filling; and~~

~~6. Mix peat moss with fill soil to promote new growth.~~

~~(4) (2) Damage Mitigation. Where, d Despite the foregoing provisions 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 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 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. shall be fertilized and excess branches that cannot be supported by the remaining undamaged roots shall be pruned.~~

~~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. sawed off flush to the trunk.~~

~~(5) (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 ~~Commissioner~~ 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 ~~Commissioner~~ 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 Section 352.11.~~

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## 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 ~~Commissioner~~ Director of Building and Housing shall determine that either:

(1) Landscaping and screening required hereunder 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 ~~Commissioner~~ 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) or a designee. ~~Urban Forestry~~

(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 Parks and 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 ~~to which a bonus credit was applied~~ that dies or is destroyed shall be replaced by either:

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

(2) ~~The trees required by the table contained in Section 352.11 without the bonus credit.~~ 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.

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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.

## Section 3115.04      Demolition Permit; Registration and Identification

(a) *Permit Required.* No person, firm or corporation shall raze or demolish or remove a building or other structure, or part thereof, without obtaining a permit therefor from the ~~Commissioner~~ Director of Building and Housing.

(b) *Registration.* No person, firm or corporation shall engage in the business of house wrecking, demolition of structure or parts thereof or removal of a building or other structure unless such the person, firm or corporation holds a valid certificate of registration issued by the ~~Commissioner~~ Director in conformity with the applicable provisions of Chapter 3107.

(c) *Requirements.* All demolition work shall be performed in conformity with NFIPA Standard 241, "Standard for Safeguarding Construction, Alteration, and Demolition Operations" and Section 509.14 of the Codified Ordinances. ~~as listed in Section 3101.07.~~

(d) *Identification.* All equipment and vehicles used in demolition or removal of debris from demolition shall be clearly identified. This identification shall be the name of the person, firm, or corporation owning or renting such vehicles and equipment, in letters having a minimum dimension of four (4) inches. Symbols or logos shall not be deemed to meet the identification requirements unless they comply with the minimum letter dimension and identify the person, firm or corporation.

Such identification shall be identical to the registration of the person, firm or corporation as set forth in the ~~Division~~ Department of Building and Housing.

~~(e) When a demolition permit is applied for on private demolition, a condition of said permit shall include the requirement that the contractor or permit holder, within three (3) days after such demolition, shall install wooden timbers upon completion of final grade of lot, to be determined by a representative of the Bureau of Demolition. The contractor or permit holder shall install six (6) inches by six (6) inches by six (6) feet of new, non-creosoted, hardwood timbers along the property line facing any public right-of-way, said timbers shall extend three (3) feet above grade, and spaced five (5) feet on center.~~

~~(f) (e) A condition of a demolition permit~~ When a demolition permit is applied for, a condition of said permit shall include the requirement that the contractor or permit holder conduct a rodent survey and, when necessary, baiting operation.

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The survey and baiting program shall be conducted by an applicator or operator duly licensed pursuant to RC Chapter 921 of the Revised Code.

## 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 Park Maintenance and Properties or a designee and then only if one or more of the situations under division (b) of Section 341.052 apply.

~~During the erection, repair, alteration or removal of any building or structure within the City, no person in charge of such erection, repair, alteration or removal, shall leave any street tree in the vicinity of such building or structure without such good and sufficient guards or protectors as shall prevent injury to the tree arising out of or by reason of the erection, repair, alteration or removal.~~

## Section 509.99      Criminal and Civil Penalties

(a) Any person, firm or corporation which violates Sections 509.01, 509.05, 509.09, or 509.11 ~~or 509.13~~ shall be fined not more than ~~five dollars (\$5.00)~~ 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 509.14~~ or 509.13 shall be fined not more than ~~ten dollars (\$10.00)~~ 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 ~~fifty dollars (\$50.00)~~ one thousand dollars (\$1,000.00) for each offense.

(d) (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 (\$1000.00) 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 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 \$1,000 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.

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

~~(d)~~ (e) Every violation by the same person, firm or corporation of Sections 509.01 to ~~509.14~~ 509.13 which continues on any day succeeding the first violation thereof, constitutes an additional violation for each of such succeeding days.

~~(e)~~ (f) In addition to civil liability for the cost of any work performed by the Commissioner or designee, ~~of Shade Trees or persons designated by him or her~~, 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, thereof dangerous to person or property or to prevent the spread of disease to trees upon public property or streets within the time specified in ~~such~~ the order shall be fined not more than five hundred dollars (\$500.00) ~~and or~~ imprisoned for not more than thirty (30) days, or both.

(g) A person, firm or corporation that receives a civil fine under this section may appeal to the Commissioner within 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 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.

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(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:

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

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(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 (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 (\$1000.00) 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*



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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 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 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 of Urban Forestry 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 believes 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

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the opinion of the Commissioner ~~of Urban Forestry 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 of Urban Forestry; 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.

~~(s)~~ (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.

Section 3. That existing Section 341.05 of the Codified Ordinances, as amended by Ordinance No. 1827-08, passed February 9, 2009, Sections 352.05 and 352.06, as amended by Ordinance No. 3077-A-89, passed June 17, 1991, Section 3115.04 as amended by Ordinance No. 799-90, passed June 18, 1990, Section 509.14, as enacted by Ordinance No. 63410-A, passed September 22, 1924, Section 509.99, as amended by Ordinance No. 2096-66, passed December 12, 1966 and Section 510.04, as amended by Ordinance No. 1242-A-07, passed October 8, 2007 are repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

MZ:rns  
9/10/18

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Council Members Zone, McCormack and Brancatelli

**AN EMERGENCY ORDINANCE**

To supplement the Codified Ordinances of Cleveland Ohio, 1976 by enacting new Sections 341.051, 341.052, 341.053, and 509.21, and by amending Sections 341.05, 352.05, 352.06, 3115.04, 509.14, 509.99, and 510.04, as amended by various ordinances, related to tree preservation and tree protection during construction and by service providers in the public right-of-way, civil penalties for damaged and removed trees, and establishing a Tree Preservation Fund.

**READ FIRST TIME on SEPTEMBER 10, 2018**  
**and referred to DIRECTORS of Public Works, Finance, Law;**  
**COMMITTEES on Municipal Services and Properties, Finance**

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

REPORT  
after Second Reading

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
MUNICIPAL SERVICES  
AND PROPERTIES

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
FINANCE

FILED WITH COMMITTEE