

ORDINANCE NO. 23-122

**AN ORDINANCE REPEALING AND REPLACING TITLE 9, CHAPTER 3 OF THE
NAPERVILLE MUNICIPAL CODE**

WHEREAS: On October 29, 2021, the City of Naperville applied for a \$15,000 reimbursement-based grant through Morton Arboretum's Urban and Community Forestry Funding program for the replanting of 240 parkway trees that were damaged and removed due to a tornado on June 20, 2021; and

WHEREAS: The City and the Morton Arboretum signed a grant agreement in February of 2022 for reimbursement funding for the planting of parkway trees; and

WHEREAS: One of the requirements before funding can be made is an agreement to adopt a tree preservation and protection ordinance that meets certain requirements of the Urban and Community Forestry Funding program; and

WHEREAS: The existing municipal code provisions for tree preservation and protection did not meet the requirements for the program; and

WHEREAS: The new Title 9 Chapter 3, called Urban Forest Protection, below, meets the requirements of the program and will allow the City to obtain the \$15,000 in reimbursement through the grant.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority as follows:

SECTION 1: Title 9, Chapter 3, Trees and Plants, is hereby repealed in its entirety and replaced with Title 9, Chapter 3, Urban Forest Protection.

Title 9 Chapter 3 - Urban Forest Protection

9.3.1 – STATEMENT OF PURPOSE

This Section of Code, along with companion sections Section 4-3-1, "Tree Diseases, Insect Infestations, and Hazardous Trees", and Title 5 Chapter 10, "Landscaping, Screening And Tree Preservation", shall govern the urban forest located with the City. Portions of the urban forest located on City property shall be considered City infrastructure and the maintenance and upkeep of such shall be governed herein. The intent and purpose of this section shall be to:

- A. Preserve, protect, and enhance the urban forest to ensure that trees are properly selected, planted and maintained within the City so that trees can protect, enhance, and preserve the quality of life for people within the City.
- B. Recognize that trees are an integral part of the infrastructure of the City and as such should be preserved, protected, and cared for as other critical City infrastructure.

9.3.2 – DEFINITIONS

CERTIFIED ARBORIST Any individual experienced in the profession of forestry or a related field and is licensed or certified in forestry by an accredited forestry industry body, e.g. International Society of Arboriculture.

DEPARTMENT Department of Public Works

INFRASTRUCTURE The basic underlying framework or features that provide collective services, including but not limited to roads, waterlines, storm sewers, bioswales, and trees in public locations.

LANDSCAPE CONTRACTOR A company or individual contracted to perform landscape services.

LANDSCAPE PLAN A plan approved by the City defining the location and species of plants and associated hardscape including grading.

PREFERRED TREE LIST A listing of tree species, located on the City website.

PARKWAY The unpaved portion of a public road or street right-of-way abutting a parcel.

PARKWAY TREE Any tree located on or within the parkway.

TREE PERMIT A written authorization from the City authorizing the applicant to conduct work which may or may not impact a tree.

TREE REMOVAL The physical removal or effective removal through cutting, chopping, sawing, damaging, topping, poisoning or other direct or indirect action intended to result in the death of a tree. It shall not mean normal pruning or trimming of a tree.

URBAN FOREST The network of trees growing within the City.

9-3-3: DUTIES AND RESPONSIBILITIES

- a. The Department of Public Works (hereinafter “the Department”) shall have responsibility for the enforcement of this section.

- b. The Department shall have at least two staff members who are certified arborists or shall contract with a certified arborist who shall provide direction and oversight of urban forestry practices for the proper care and management of the urban forest.
- c. The Department shall have supervision over all trees, shrubs and other plant life overhanging the streets or growing upon any alley, parkway, sidewalk or any other public place owned or controlled by the City; including the planting or removal of any tree or shrub.
- d. The Department shall regulate, encourage and enforce the preservation, cultivation and planting of trees, plants and shrubbery in the parkways and other City owned or controlled public places.
- e. When requested, the Department shall advise owners and occupants of lots regarding the kind of trees, plants and shrubbery and the method of planting best adapted to, or most desirable on particular streets and places. In determining the kind of trees, plants or shrubbery which are desirable or undesirable, it shall be guided by the recommendations of the Illinois Horticultural Society, the International Society of Arboriculture and shall take such measures as may be deemed necessary for the control or extermination of insects and other pests and plant diseases which may injuriously affect trees, plants or shrubs that are now growing or may be hereafter growing in the parkways, and public places in the City.

9.3.4 – PRESERVATION

- A. The City shall have and maintain a current urban forest inventory of publicly owned trees.
- B. The City shall require that any Contractor, working for the City who may interact or have impact on the parkway trees, utilize a certified arborist for all work pertaining to trees, including but not limited to removal, pruning and planting activities. Contractors must have insurance coverage as detailed in the bid document.
- C. All tree planting, selection and management by the City shall be in compliance with the Department's policy manual. The policy manual is available upon request at the Department. Every effort will be made by the City to maintain a diverse urban forest.

9.3.5 – PLANTING AND MAINTENANCE

- A. It shall be unlawful to plant any tree or shrub in the public right-of-way, the parkway or on other publicly owned property, without prior written approval from the City. It shall be unlawful to plant any tree in any parkway less than thirty (30) feet from any other tree in the same parkway, nor at a distance of less than four (4) feet from the established sidewalk line of the street except by written permit from the Department.

- B. Setback Regulations: No tree shall hereafter be planted within the intersection of street lines. No shrubbery or plant life shall hereafter be planted in any parkway at a distance of less than thirty (30) feet from the intersection of the nearest street line, and all shrubbery or plant life now or hereafter growing in any parkway at a distance of less than thirty (30) feet from the intersection of the nearest street line shall be removed by the owner of the abutting property. If the owner fails or neglects to do so, then the Department shall proceed to remove the same.
- C. All trees planted by the City shall be planted consistent with the American National Standards Institute industry standards for planting (ANSI A300).
- D. Trees purchased by the City shall be of good quality and consistent with industry standards.
- E. City owned trees shall be pruned on a schedule consistent with the appropriated yearly budget. Pruning shall be done under the direction of a certified arborist and consistent with the American Standards Institute standards for pruning (ANSI A300).
- F. All trees and shrubs growing on City owned property shall be trimmed or pruned in such manner as to promote the life and growth. All trees shall be trimmed so that the branches shall not obstruct the light from any street light to the adjacent street or sidewalk. Branches of trees which overhang any street, alley, or sidewalk shall be trimmed so that there shall be a height of at least twelve (12) feet above the surface of the street, alley, or sidewalk, unobstructed by branches. Exceptions may be made by the Department in the trimming of young trees.
- G. All dead, broken or decayed limbs or branches that overhang a street, alley, or sidewalk shall be removed; and all shrubs and plant life growing along any public sidewalk shall be trimmed or cut back so that no part thereof shall overhang such sidewalk. Such trimming of trees and shrubs shall be done by the owner of the abutting property on which such trees or shrubs are located under the direction and supervision of the Department in the event that such abutting property is not owned by the City.
 - a. If the owner fails, or refuses to trim the trees and shrubs herein, the Department shall cause the trimming to be done. Charges incurred by the City for trimming or removal on non-City-owned property shall be a lien upon the abutting premises in accordance with the provisions of Section 8-1C-5 of this Code.

9.3.6 – TREE PROTECTION

- A. Unless otherwise authorized by this Section, it shall be unlawful for any person to remove, injure or undertake any procedure which will cause death, substantial damage, or create a hazard, to any City owned tree without first obtaining a Tree Permit from the City.

- B. In the event of any site improvement which may impact a City owned tree, a Tree Preservation Plan, in accordance with Section 5-10-5:3.1.2 of the Naperville Municipal Code, must be submitted in a form acceptable to the City and be approved and implemented prior to the start of any work.
- C. In instances where construction or site work requires heavy equipment that may impact trees on City property, appropriate tree protection measures must be taken and identified in the Tree Preservation Plan.
- D. An applicant seeking a permit for significant tree removals or tree removal and/or planting on City property related to construction and/or development shall comply with all requirements Title 5 Chapter 10-5.
- E. Wires:
 - 1. Supervision: When it becomes necessary to trim branches of trees for the purpose of running wires through same, the trimming shall be done under the supervision of the Department.
 - 2. Attached To Trees Prohibited: It shall be unlawful for any person to, without the written permit of the Department, attach any electric wire or insulator to any tree now or hereafter growing in any street or public highway, or parkway in the City. Any person having any wire with electricity shall, whenever practicable, securely fasten the same so that such wire shall not come in contact with any tree in any street or alley in the City.
 - 3. Access To Premises: Authorized agents of the City shall at all reasonable hours have free access to the premises of properties containing electrical works or other property belonging to the Naperville Department of Public Utilities for the purpose of trimming or removing trees or plants to install or maintain public utility lines.
- F. Depositing Material: It shall be unlawful for any person, without a written permit from the Director, to place or maintain upon the ground in any parkway in the City any material which shall impede free passage of water and air to the roots of any tree, without leaving an open space not less than two (2) feet in width all around the trunk of such tree. Whenever there is no such open space around an existing tree in a parkway or other public space in the City, the Department may do so and charge the expense to the person depositing such material.

9.3.7 – TREE REMOVAL AND REPLACEMENT

It shall be unlawful for any person to remove, destroy, break, cut, deface or in any way injure or interfere with any tree, plant, or shrub that is now or may hereafter be growing in any street, alley, parkway, or public place in the City without written permit from the Department.

The City will have a parkway tree replacement program based on City Council approved funding. The program and preferred species list will be outlined in the Department of Public Works Service Rules and Policy Manual. Tree replacement species will come from the Preferred Species List. All tree replacement plantings will require an underground utility location prior to planting.

9.3.8 – TREE PERMIT PROCEDURE

- A. Applicant Submission: An applicant for a tree removal or planting on public property shall fill out a Tree Removal or Tree Planting permit. The designated arborist in the Department shall make an inspection and render a determination. Parkway trees are city property and may only be removed by the City, unless an exception is made through the Tree Removal permit process.

The City shall issue a permit upon approval of an application and payment of a required fee.

- B. Appeal: If a permit to remove or plant a parkway tree is denied, the applicant may appeal to the Department Director within 7 days of receipt of the denial. The Department Director shall review the permit and the denial and make a determination in writing within 10 days.

9.3.9 – VIOLATION AND PENALTY

Violations: This Chapter shall be enforced by an appropriate ordinance enforcement action, and enforcement may be commenced by the issuance of a notice to appear in accordance with Chapter 38, Section 107-12 of the Illinois Criminal Code, Illinois Compiled Statutes, whenever it appears that a violation of this Chapter has been committed. A notice to appear may provide for settlement of the violation by payment of penalties within five (5) days of receipt of the notice to appear.

Penalties: Any person violating any provisions of this Chapter, unless otherwise provided herein, shall be subject to a fine of seventy-five dollars (\$75.00) for the first citation, one hundred fifty dollars (\$150.00) for the second citation, and three hundred dollars (\$300.00) for the third and subsequent citations within a 12-month period. Service of summons may be by certified mail in accordance with Chapter 24, Section 1-2-9.1 of the Illinois Municipal Code.

Any person who injures a public tree shall be held responsible for the cost of the repairs, such as pruning or cabling, if the injured tree will not die as a result of such injuries. In cases where the tree has been damaged beyond repair the person responsible for the damage shall pay the cost the City incurs to remove and replace the tree.

9.3.10 – EXCEPTIONS

If because of emergency weather or other casualty conditions a tree is endangering health, safety or property and requires immediate removal, verbal authorization may be given by the Director for the tree removal without obtaining a written permit. Such verbal authorization shall later be confirmed in writing by the city.

9.3.11 – SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter and the application thereof to other persons or circumstances shall not be affected thereby.

SECTION 2: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this 15th day of August 2023.

AYES: WEHRLI, HOLZHAUER, KELLY, LEONG, LONGENBAUGH, MCBROOM,
TAYLOR, WHITE, WILSON

APPROVED this 16th day of August 2023.

Scott A. Wehrli
Mayor

ATTEST:

Hilda Godinez
Records Clerk