

ORDINANCE NO. 22-115
INTRODUCED BY: Mr. Winzig

First Reading Oct. 17, 2022
Second Reading November 7, 2022

AN ORDINANCE
**ENACTING CHAPTER 1335 OF THE CODIFIED ORDINANCES OF THE
CITY OF BAY VILLAGE, OHIO RELATING TO TREES, MAINTENANCE,
PROTECTION, PRESERVATION, REMOVAL AND RESTORATION,
AND DECLARING AN EMERGENCY.**

WHEREAS, the City recognizes the importance of the tree canopy and trees to the City of Bay Village; and

WHEREAS, the City wishes to preserve and protect the existing tree canopy and trees within the City, and to promote and encourage proper care and conservation methods concerning trees within the City; and

WHEREAS, the City desires to update its tree code and incorporate it into a new chapter in the Codified Ordinances within the City's Building Code;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Bay Village, Ohio:

SECTION 1. That the Codified Ordinances of the City of Bay Village are hereby amended by enacting new Chapter 1335 to read as follows:

**“CHAPTER 1335 TREES
MAINTENANCE, PROTECTION, PRESERVATION, REMOVAL & RESTORATION**

1335.01 PURPOSE.

The purpose of this chapter is to conserve, protect and restore to the greatest extent possible the City's trees and wooded areas; to enhance and promote the community image; to enhance and preserve economic property values and the quality of life in the City; to aid in the alleviation of erosion, siltation, and other harmful effects of land-disturbing activities; to aid in controlling the quantity and intensity of storm water runoff; to alleviate air pollution and non-point source water pollution; to protect and promote the use of existing vegetation as noise and visual buffers; to preserve the environmental and ecological benefit of trees on air pollution and carbon dioxide levels as well as dust filtration; to reduce energy consumption through the wind break and shade effects of trees when they are properly placed on a site; to preserve and enhance nesting areas for birds and other wildlife and movement corridors for wildlife; to educate and empower residents to invest in protecting and replenishing green space whenever possible, through proper pruning, care and plantings and to promote the public health, safety, and welfare through the preservation and replacement of trees while allowing for the reasonable development of lands in such a manner that implements the stated goals, objectives, policies and standards of the City.

1335.02 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply:

- (a) **“Aggregate Diameter”** means the combined sum of diameters of all stems measured individually of a multiple stem tree measured at breast height (See diameter breast height).
- (b) **“Boundary Line Tree”** means a tree is a boundary-line tree when the property boundary line passes through any portion of the trunk of a tree at the point where the trunk emerges from the ground.
- (c) **“Caliper”** means the diameter of a tree trunk six inches above the existing grade or proposed planted grade. This measurement is only used for replacement trees in this chapter.
- (d) **“Cleveland Tree Plan”** means the tree canopy data published for Cuyahoga County, Ohio providing detailed analysis of tree cover and tree benefits in conjunction with Cuyahoga County Urban Tree Canopy Assessment data, to help evaluate the current state of greater Cleveland’s urban forest and to track changes in tree canopy.
- (e) **“Critical Root Zone”** means the area inscribed by an imaginary line on the ground beneath a tree having its center point at the center of the trunk of the tree and having a radius equal to one foot for every inch of diameter breast height.
- (f) **“Diameter Breast Height”** (DBH) means the diameter of a tree measured at four and one-half feet above the existing grade at the base of the tree. This measurement is an industry standard measurement used for existing trees.
- (g) **“Director”** means the City’s Director of Public Services and Properties, Building Director, or their designee.
- (h) **“ISA”** means the International Society of Arboriculture who as a group governs the accreditation of tree care professionals.
- (i) **“Protected Tree”** means a protected tree is any tree having a diameter of 8 inches DBH or larger or having an aggregate diameter of 20 inches DBH.
- (j) **“Remove”** or **“Removal”** means the causing or accomplishing of the actual physical removal of a tree, or the effective removal through damaging, poisoning, or other direct or indirect action resulting in, or likely to result in, the death of a tree.
- (k) **“Tree”** means any self-supporting woody plant together with its root system, growing upon the earth usually with one trunk, or multi-stemmed trunk system, supporting a definitely formed crown.
- (l) **“Tree Commission”** means the City Commission meant to assist City officials and City Council with the preservation, protection, and enhancement of the urban forest in the City of Bay Village as established in Chapter 146 of Codified Ordinances.
- (m) **“Tree Maintenance”** means the caring for and protection of trees by property owners and contractors, adhering to ANSI A300 standards to reduce the prevalence of issues, including the possible spread of oak wilt, all stemming from poor pruning practices.
- (n) **“Tree Preservation Plan”** means a proposal which includes a tree survey and a written plan with text and/or graphic illustrations indicating the methods which are to be used to preserve existing trees during construction, and methods for ongoing maintenance, including fertilizing and pruning following ANSI A300 standards.

- (o) **“Tree Selection”** means for residents and contractors planting trees, recommendations to plant non-invasive tree species as published by the State of Ohio Forestry Department, the City of Bay Village Tree Plan and/or The Cleveland Tree Plan, but not limited to these sources.
- (p) **“Tree Survey”** means a graphic display drawn to scale by landscape architect or certified arborist, not to exceed one inch (1 inch = fifty feet (50')), showing all existing protected trees on the site. The tree survey shall include species, DBH, and contain the outline of the critical root zone of each such tree.

1335.03 PUBLIC PROPERTY TREE MAINTENANCE, PRESERVATION AND REPLENISHMENT.

- (a) No person shall without written permission of the Director of Public Services and Properties spray, fertilize, remove, destroy, damage, cut, carve, top, climb with spurs, prune, or otherwise severely injure, including the root system, or treat any tree or shrub having all or any portion of its trunk in or upon any public property or within the public right of way.
- (b) No person shall attach or place any object, including, but not limited to, rope, wire, nail, chain or sign, to any such tree or shrub or attach any such object to the guard or stake intended for the protection of such tree within the public right of way or on public property.
- (c) No person shall place, store, deposit, or maintain, upon the ground in any public street or public place, any compacted stone, cement, brick, sand, or other materials which may impede or obstruct the free passage of air, water, and fertilizer to the roots of any tree or shrub growing in any such street or place without written authorization from the City.
- (d) No person shall cause any natural or artificial gas, water, oil, liquid dye or any other substance deleterious to trees to come in contact with the soil surrounding the roots of any trees upon any public place in the City, in such a manner as to kill, injure, deface, destroy or affect the growth of such trees.
- (e) No person shall without the written permission of the Director of Public Services and Properties damage, misuse or remove any device placed to protect or maintain such tree within the public right of way or on public property, except in case of immediate necessity for the protection of life or property.
- (f) No person shall change the natural drainage; excavate any ditches, tunnels, or trenches; or lay any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any public property without obtaining a written approval from the City and without strictly complying with the provisions of the issued approval and provisions of this Chapter.
- (g) No person shall attach any electric wire to any tree growing or planted upon any public street of the City, including low voltage holiday lighting without the written permission of the Director. Every person having any wire charged with electricity running through or across a public street shall securely fasten such wire or wires so that they shall not come in contact so as to injure any tree therein, and shall temporarily remove any such wire or the electricity therein when it shall be deemed necessary by the Director of Public Services and Properties, in order to take down or prune any trees growing in a public street, within twenty-four hours after the service upon the owner of such wire, or his agent, of a written notice to remove the wire or the electricity therefrom.

- (h) No person shall perform, or contract with another to perform, excavation or construction work within the drip line of any tree having all or any portion of its trunk in or upon any public property without first installing a fence, frame, or box in a manner and of a type and size satisfactory to the City to protect the tree during the excavation or construction work. For every one inch of DBH there shall be one foot of protective radius around the tree unless otherwise approved by the Director of Public Services and Properties or his/her designee. All building materials, equipment, dirt, or other debris shall be kept outside the root protection zone. The tree protection fence, frame, or box shall not be removed unless or until the City authorizes it to be removed.
- (i) No person shall plant any tree or shrub on any public street right-of-way or public property without first obtaining a written permit and approval from the City and without complying strictly with the provisions of the permit and the provisions of this chapter.

1335.04 TREES ON PRIVATE PROPERTY, OVERHANGING PUBLIC PROPERTY AND DEAD OR DISEASED TREES.

- (a) **Trees on Private Property:** The owner of every lot or parcel of land within the City upon which a tree, plant or shrubbery stands with any part thereof upon or overhanging a public street or sidewalk or being found to have an infectious disease shall conform to the regulations herein provided; otherwise, the Director of Public Services and Properties and/or the Building Director or their designated agents (hereinafter the "Director") shall cause such trees to be trimmed or removed in accordance with such regulations, and assess the cost thereof against the owner of such lot or parcel of land.
 - (1) The owner shall trim or cause to be trimmed each tree, plant or shrubbery so that a clear height of eight feet (8') between the lowest branches of the same and the sidewalk is maintained, and a clear height of fourteen feet (14') between the lowest branches of the same and the street is maintained.
 - (2) The owner shall trim or remove, as the case may require, every dead, decayed or broken tree, plant or shrubbery, or part thereof, so that the same shall not fall to the street or sidewalk.
 - (3) The owner shall cut down and remove any tree, plant or shrubbery, or any part thereof, as may be necessary to provide a clear and unobstructed view of traffic from all directions at any street intersection, or to abate any nuisance necessary to protect life, limb or property of persons, drivers of any vehicles, or pedestrians using such street or sidewalk.
 - (4) No Oak trees shall be trimmed during the months of April through October in order to prevent the further spread of Oak Wilt unless deemed necessary or hazardous after review by the Director or his/her designee.
- (b) **Infected, Dead or Diseased Trees:** The Director is authorized to inspect any tree or part thereof within the City which is suspected of being infected, diseased, or dead. If upon such inspection there is reason to believe a tree or part thereof is dead or a disease is present, the following action shall be taken by the Director:

- (1) On City-owned property and on a public street right of way, immediately order the removal of the tree and trimmings in such a manner as to prevent as fully as possible the spread of any disease and/or a hazardous condition.
- (2) On private property, a written "notice of violation" shall be issued to the property owner by delivering it personally to the owner of the property, or by mailing a copy of such order to the last known address of the owner by first class mail. The order shall set forth a time limit, not to exceed 30 days for compliance. If the notice is returned showing the letter was not delivered, a copy thereof shall be posted in a conspicuous place on or about the real estate involved. Posting for 72 hours shall be considered legal notice. In case of extreme danger to person or property as determined by the Director of Public Services and Properties or his designee, compliance may be required immediately or the danger may be removed by the City by notifying the property owner by posting a written notice at the property or delivering the written notice personally to the owner.
- (3) Upon failure to comply with the order within the specified time, the City may remedy the condition or contract with others for such purpose and charge the cost thereof to the owner. The person remedying the condition shall be authorized to enter upon the premises for that purpose. If the cost of remedying the condition is not paid within ten days after a statement is mailed, such cost shall be levied against the property upon which the hazard exists, shall constitute a lien thereon and shall be certified to the County Auditor to be collected in the same manner as other taxes. The levying of such an assessment shall not affect the owner's liability for a fine as hereinafter provided. In the event a tree or part thereof is found to be dead or diseased, residents are encouraged to contact a Professional Commercial Tree Company with ISA certified professionals on staff to provide an assessment for the proper trimming, pruning and removal of the affected tree to ensure procedures used meet industry standards and safe removal practices.

(c) Boundary-Line Trees:

- (1) When a boundary-line tree trunk is on the line between two or more private properties, the respective property owners shall share the responsibility to care for and maintain the tree. In the event the tree becomes damaged, diseased or dies, the property owners will be expected to work together and shall be jointly responsible in the proper removal of the affected tree and its contents.
- (2) When a boundary-line tree is between the City right-of-way or City-owned land and private property, the City shall be responsible to maintain and/or properly remove the tree.
- (3) If a boundary line survey is required to determine ownership of a tree in question, the costs incurred to secure the survey shall be the responsibility of the property owners.

1335.05 TREES IN PUBLIC RIGHT OF WAY.

- (a) No shade or ornamental tree or shrub shall be planted in any of the public streets or right-of-way of the City by any property owner, except as is provided in the Master Street Tree Plan heretofore adopted by the City. Any such planting shall require the written approval of the Director, and such written approval shall designate the species of trees to be planted, the

required spacing, the required minimum caliper size, all as specified in the City of Bay Village Master Street Tree Plan as such Plan now exists, or as it may be amended hereafter from time to time.

- (b) No tree shall be planted under electric lines on any of the public streets of the City, which at the estimated full growth will exceed twenty-five (25) feet in height, or as to interfere with the aforementioned utility lines.
- (c) Trees planted on any of the public streets of the City shall be planted no closer than twenty (20) feet apart; no closer than thirty five (35) feet from an intersection; no closer than ten (10) feet from all utility poles, aprons, hydrants, manholes or other utility infrastructure unless specifically approved by the Director.
- (d) The City may cause the removal of any existing tree in the right-of-way that does not conform with the Master Street Tree Plan at the cost expense of the property owner.

1335.06 COMMERCIAL PROPERTY AND RESIDENTIAL PROPERTIES SUBJECT TO CHAPTERS 1308 AND 1309 OF THE CODIFIED ORDINANCES.

- (a) **General Regulations.** Section 1335.06 shall apply to all properties subject to the provisions of Chapters 1308 and 1309. Prior to any construction activities on a site containing protected trees, a Tree Preservation Plan including a tree survey, must be submitted to the City for review and approval.
- (b) **Site Layout and Design.** All reasonable efforts shall be undertaken in the architectural layout and site engineering design of the proposed development to preserve existing protected trees. Protection of the critical root zones of protected trees shall be carefully reviewed and consideration given during the preparation of the tree preservation plan.
 - (1) It shall be required, to the extent possible, that building(s), driveway(s), sidewalks, bike paths, storm water management facilities, hardscape patios, and parking areas be designed in such a way as to avoid unnecessary removal of protected trees.
 - (2) Any required drainage and grading plan, including storm water management facilities, shall be developed in such a way as to avoid removal of protected trees in the tree preservation area thereby causing risk of loss through change in grade or moisture.
 - (3) Every effort shall be made to preserve existing protected trees during the placement of utility service lines including auguring and boring as opposed to open cutting or trenching as appropriate.
 - (4) Landscape design shall include to the best extent possible the preservation of existing protected trees and/or the replanting of trees to replace trees which are to be removed.
 - (5) To help preserve protected trees on adjacent parcels, consideration shall be made during architectural and site engineering layout and design, including grading and utility placement, of the proposed development through sensitivity to the critical root zones of said protected trees. The critical root zones of protected trees on adjacent parcels shall be carefully reviewed and consideration given during the preparation of the tree preservation plan.

1335.07 TREE REPLACEMENT REQUIREMENTS AND EQUIVALENT BAY VILLAGE TREE FUND FEES.

As a condition of obtaining a building permit a property owner shall replace all trees removed pursuant to Chapter 1335 as follows:

(a) Commercial Properties and Residential Properties Subject to Chapters 1308 and 1309 of the Codified Ordinances

- (1) Half the total inches at DBH removed of protected trees must be replaced on affected property in equivalent caliper inches. Replacement selections shall be submitted at the time of permit application and will be reviewed by the Director or his/her designee. For example: the removal of a twenty-four inch (24") DBH tree must be replaced with a tree or trees with a combined total of twelve-inch (12") caliper.
- (2) If the property is unable to accommodate or owner unwilling to replace according to the above requirements, compliance can be met with a monetary deposit to the Bay Village Tree Fund at a rate of Twenty Dollars (\$20.00) per one-inch (1") DBH of protected trees removed. Minimum One Hundred Seventy-Five Dollars (\$175.00); no maximum.

(b) Tree Planting and Replacement Fund

- (1) Mitigation fees and penalty assessments under this chapter shall be deposited into the Bay Village Tree Planting and Replacement Fund to be used for tree planting and revegetation projects such as parkways, parks, planting of trees along public trails and beautification projects, to purchase property for tree mitigation sites, or beautification projects, for the retention of a City arborist, or for the development, staffing or implementation of a City forestry program, if established.

1335.08 PLANTING PROHIBITION OF CERTAIN TREES.

- (a) No person shall plant any variety of trees which are commonly known as poplars (*Populus deltoides*), box elder (*Acer negundo*), siberian elm (*Alnus pumila*), willows (*Salix spp*) and thorn varieties of honey locust (*Gleditsia tricanthos*) or trees currently listed the Invasive Plants List hosted by the Ohio Department Agriculture in the public right of way or any publicly owned property.

1335.09 AUTHORITY OF CITY DIRECTOR.

- (a) The Director of Public Service and Properties, or their designee, is hereby given full jurisdiction, authority, control, supervision and direction of all trees which exist upon any public place in the City, and over all trees which exist upon any private property in the City when, in his or her opinion, such trees constitute a hazard to public safety, health or welfare. In the exercise of any of the powers herein granted, the Director shall have the authority to delegate all or such part of his or her powers and duties, with respect to supervision and control of trees, to his or her subordinates and assistants in the employ of the City, as he may from time to time determine.
- (b) No person shall prevent, delay or interfere with the Director or other City employee in the planting, pruning, spraying or removing of a tree on public grounds or right-of-way, or in the removal of stone, cement or other substance from the area around the trunk of the tree.

- (c) In the event the owner does not trim or remove any tree, plant, shrubbery, or any part thereof, in accordance with the provisions of this chapter, then the Director is authorized, and it is declared to be his duty to have enforced the provisions of this chapter, and to cause to be trimmed or removed such tree, plant, shrub or part thereof.

1335.10 EXEMPTIONS.

- (a) The requirements of this chapter shall be followed except:
 - (1) During a period of emergency, such as a tornado, ice storm, flood or other such extreme act of nature as declared by the Director.
 - (2) If the failure to remove a tree would constitute an imminent danger to the environment, property, public health, safety, or welfare due to the hazardous or dangerous condition of such tree as determined prior to removal by the Director.
 - (3) For necessary tree removal by a public agency or utility company within dedicated easements.
 - (4) If the tree is dead, dying or diseased as approved prior to removal by the Director.
 - (5) In the event of an emergency or hardship as determined by the Director.
 - (6) Removal is consistent with good forestry practices or maintaining the health of remaining trees as detailed by the Director.

1335.11 NONCOMPLIANCE.

It shall be unlawful for any person, firm or corporation, to fail to abide by the terms of any tree preservation plan or tree removal permit issued by the City. If, in the opinion of the Director, the necessary precautions as specified in the tree preservation plan were not undertaken before construction commenced or are not maintained at any time during construction, a stop work order will be issued by the City until such time as the permittee complies with these precautions. Additionally, any loss of a protected tree due to non-compliance and or the failure to follow a permitted remediation plan will result in a penalty.

1335.12 APPEALS.

- (a) An appeal from any decision of the Director of Public Service and Properties or Building Director relating to Chapter 1335 may be made to the Board of Zoning Appeals by any person aggrieved or affected by such decision within 10 days.
- (b) The Tree Commission, the Building Director and Director of Public Service and Properties or his/her designee may provide comment and opinion to the Board of Zoning Appeals on appeals under this section.

1335.13 CONTRACTOR REGISTRATION.

All contractors performing tree trimming or removal must be registered with the City pursuant to Codified Ordinance 1310.01.

1335.99 PENALTIES.

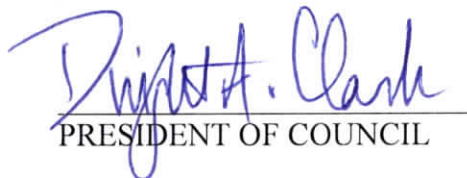
Whoever violates any provision of this chapter or any rule or regulation promulgated thereunder or fails to comply therewith or with any written notice or written order issued thereunder shall be guilty of a misdemeanor and upon conviction thereof be fined not less than Twenty-Five Dollars (\$25.00) nor more than One Thousand Dollars (\$1,000.00) for a first offense and for a second or subsequent offense shall be guilty of a misdemeanor of the second degree. Each day such violation occurs or continues shall constitute a separate offense.”

SECTION 2. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any committee that resulted in those formal actions were in meetings open to the public in compliance with law.

SECTION 3. That this ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare, wherefore this ordinance shall be in full force and take effect immediately upon its passage and approval by the Mayor.

PASSED: December 5, 2022


CLERK OF COUNCIL


PRESIDENT OF COUNCIL


MAYOR December 5, 2022

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