

AN ORDINANCE
of the Council of the City of Berkley, Michigan
amending, Chapter 130 – Vegetation, Article II – Trees, Bushes, and Shrubs
Sec 130-31 to Sec 130-44 of the City of Berkley Code of Ordinances

Chapter 130 - VEGETATION

Footnotes:

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Charter reference— City council, § 4.1 et seq.; functions of City Manager, § 8.5.

Cross reference— Buildings and building regulations, ch. 26; mobile homes, trailers, and recreational vehicles, ch. 70; parks and recreation, ch. 86; planning, ch. 90; soil erosion and sedimentation control, ch. 98; streets, sidewalks and other public places, ch. 106; shrubs and bushes at intersections, § 106-108; trees at intersections, § 106-109; subdivision and combination of lands, ch. 110; zoning, ch. 138.

ARTICLE I. - IN GENERAL

Secs. 130-1—130-30. - Reserved.

ARTICLE II. - TREES, BUSHES AND SHRUBS

Sec. 130-31. - Purpose of article.

The purpose of this article is to promote the general welfare, health and safety of the public by protecting and preserving city water and sewer lines, public streets and sidewalks, the delivery of necessary heat and light to city

residents and by controlling certain diseases and destructive pests through the regulation of the planting, maintenance and removal of all trees within the city.

Berkley's urban forest profoundly affects the community's distinctive character and enhances its visual appeal. The trees are a vital part of that appeal and an important asset to the natural ecosystem. Furthermore, the city finds that continued development and alteration of the land without specific regulations to protect trees results in unnecessary encroachment upon, damage to, or elimination of trees that are important physical, aesthetic, recreational, and economic assets to the community as a whole. The city is charged with protecting the health, safety and welfare of its current and future residents and the urban forest is an integral part. This article will establish standards for appropriate selection, location and maintenance of those trees.

The protection of such natural resources is a matter of paramount public concern, as provided by Article IV, Section 52 of the Constitution of 1963, and the Natural Resources and Environmental Protection Act of 1994, Act No. 451 of the Public Acts of Michigan of 1994 (MCL 324.101 et seq. as amended).

Specifically, the City finds that:

- (a) Trees protect health through the absorption of air pollutants and contaminants, the reduction of excessive noise and the production of oxygen;
- (b) Trees contribute to the stabilization of the land and prevention of flooding and erosion;

- (c) Deciduous trees reduce energy consumption by shading and cooling the land in the summer and allowing sun to penetrate the land during the winter;
- (d) Trees provide habitat for birds and animals, an essential part of the natural ecosystem;
- (e) Trees provide economic support of local property values;
- (f) Large trees, in particular,
 - (1) Produce more oxygen than smaller trees,
 - (2) Occur with less frequency than smaller trees,
 - (3) Are more valuable than smaller trees,
 - (4) Offer the community more intangible benefits, such as providing a living link between generations, and
 - (5) Are, for all intents and purposes, irreplaceable.

(Code 1981, § 31-16)

Sec. 130-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boulevard: A street or road with a landscaped center island running the length of the street or road.

Bond: Cash, certified check or surety bond.

Contractor: Any person, proprietorship, partnership or corporation engaged in the business of planting, removing, cutting, trimming, pruning, spraying or otherwise treating trees.

Diameter breast height (d.b.h.): The diameter in inches of a tree measured at four and one-half feet above the existing grade.

Drip line: An imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

Greenbelt: All land located between the public sidewalk and the curb of any public street or roadway.

Material: Includes soil, sand, gravel, clay, peat, mud, debris and refuse, or any other material organic or inorganic.

Park: Any park, tot lot or area owned by the city to which the public has free access for any use thereon permitted by law.

Private tree: Any tree now existing or which may exist on private property.

Prohibited species: Any species of a tree which is listed on the schedule of prohibited tree species on file in the office of the City Manager or designee.

Protective barrier: A physical structure limiting access to a protected area, composed of wood or other suitable material which ensures compliance with the intent of this article. Variations of these methods maybe permitted upon written request if they satisfy the intent of this article.

Public tree: Any tree now existing or which may exist on any public land or within the public right-of-way.

Public utility: Any utility company owning or operating a pole, line, pipe, wire, cable or conduit used for the transmission of electricity, gas, telecommunications, signals, pictures, data, water, sewage or cable television service.

Root Protection Zone: A tree drip line that the City Manager or designee may expand or contract depending on the species of the trees and based on site-specific conditions, so as to improve the chances that the tree will not be damaged during construction and to permit construction to take place.

Topping: The severe cutting back of limbs to stubs larger than three inches within the tree's crown to the extent that the natural canopy is removed and the tree is disfigured.

Transplant: The digging up by a property owner of a tree from one place on a property and the planting of the same tree in another place on the same property.

Tree: A woody plant with erect perennial trunk, which at maturity is 13 feet or more in height and which has a more or less definite crown of foliage.

Tree fund: A fund established and managed by the city for tree planting, maintenance, and replacement.

Tree Location Survey and Protection Plan: A written plan having text and graphic illustrations and the methods to be used to preserve all trees during development.

(Code 1981, § 31-17)

Cross reference— Definitions generally, § 1-2.

Sec. 130-33. - Authority of City Manager or designee.

- (a) The City Manager or designee shall have the power and control over all trees now existing or which may be planted within the boundaries of the city. The City Manager or designee shall be authorized to interpret and enforce the provisions of these articles.
- (b) The City Manager or designee shall prepare, maintain and update a schedule of:
 - (1) Prohibited species of public trees;
 - (2) Prohibited species of private trees; and
 - (3) Official public trees.
- (c) All three of these schedules shall be made available to the public.
- (d) **Preserve or Remove.** The City Manager or designee shall have the authority to plant, trim, spray, preserve and remove trees and other plants and grassy areas in public places to insure safety, public utility access or to preserve the symmetry and beauty of such public spaces.
- (e) **Order to Preserve or Remove.** The City Manager or designee shall have the authority to order the trimming, preservation or removal of trees or plants on private property when they shall find such action necessary for public safety

or to prevent the spread of disease or pests to public trees and places.

(Code 1981, § 31-18)

Sec. 130-34. - Administration of article.

(a) *Administration.* The City Manager or designee shall have the power to administer this article by adhering to the recommended practices of the United States and state departments of agriculture, all federal and state forestry and environmental regulations and the practices of tree preservation which are generally accepted by qualified persons in the field of forestry and tree management. The City Manager or designee shall also have the power to promulgate and delegate the rules and regulations consistent with the recommended practices of these agencies. All rules and regulations adopted by the City Manager or designee in the administration of this article shall be placed in writing, retained by the City Manager or designee and be made immediately available for review by any member of the public who requests them or who may be affected by the provisions of this article. Any person requesting copies of these rules or regulations may be required to pay a fee for their copying providing that such fee is identical to the fee charged by the city for the copying of any other matter of public record.

(b) *Exceptions.* The City Manager or designee may grant an exception from the requirements of this chapter when undue hardship will result from strict compliance. In granting an exception, the city may attach whatever conditions they deem necessary to further tree protection. Those seeking an exception shall apply for an exception as prescribed by the City Manager or designee, pay fees established in the schedule of fees, charges, bonds and insurance, and provide such additional information as may be required by the City Manager or designee.

(Code 1981, § 31-19)

Sec. 130-35. - Enforcement of article.

Violation of any portion of this article by any person shall be deemed a misdemeanor. Also, each violation of this article shall constitute a nuisance for which the city may seek abatement under any provision allowed by law.

(Code 1981, § 31-20)

Sec. 130-36. - Tree board.

(a) *Established; terms; membership; compensation.* A tree board is hereby created. It shall consist of nine members appointed from the citizenry of the city, one of whom may be a member of the city council. The term of each member shall be three years, except for when a city councilmember is appointed who will serve for a one-year term. The director of the Department of Public Works shall be an ex-officio member of the tree board. If a candidate is available, the

council shall also appoint for a one-year term, beginning each October, one high school student who is a resident of the city and who shall serve as an advisory member of the tree board, but who shall have no voting powers. Members shall receive no compensation.

(b) *Qualifications of members.* Members of the tree board must demonstrate a genuine interest in and a reasonable amount of knowledge of tree management and preservation.

(c) *Tree management/preservation program.* The tree board shall assist the City Manager in developing a comprehensive tree management and preservation program for the city. It shall serve as a clearing house for information on trees. It shall present to the city council an annual report on its activities.

(d) *Officers; rules/regulations; journal; meetings.* The tree board shall choose its own officers and make its own rules and regulations concerning its meetings. Its meeting shall be open to the public. It shall keep minutes of its meetings and properly file them with the City Manager. The city shall provide reasonable assistance to the tree board to enable it to function properly.

(e) *Requests.* The tree board shall consider, investigate and report on any matter within the scope of its responsibilities when requested to do so by the city council or the City Manager.

(Code 1981, § 31-21; Ord. No. 1-94, § 1, 1-31-1994)

Cross reference— Boards and commissions, § 2-176 et seq.

Sec. 130-37. – Site plans.

(a) When the development of any property requiring site plan approval occurs, the city planning commission shall review landscaping plans and may require trees to be planted on or near the site consistent with the elements of the adopted city master plan.

(b) When the development of any property requires, under city ordinance, a site plan review and approval or demolition permit, a tree location survey and protection plan containing the information in Section 130-44 hereof must be submitted to and approved by the City Manager or his designee (Where site plan review is by the planning commission, the tree location survey and protection plan must be submitted to and approved by the planning commission).

(Code 1981, § 31-22)

Sec. 130-38. - Contractors.

(a) *Bond and insurance required.* No contractor shall engage in the business of removing or trimming any public tree in the city except upon presentation of a bond and necessary insurance certificates in such form as to protect the city and any person in the city from damage to person or property resulting from the contractor's negligence.

(b) *Conditions.* Any person or entity who trims or removes any public or private tree must remove from this city all tree trunks, limbs, branches and debris of any kind resulting from the trimming or removing of each tree within a timely manner of the actual cutting of the tree and that no tree trunks, limbs, branches or debris of any kind shall block, cover or impede any public sidewalk or street after the end of work on any day.

(Code 1981, § 31-23)

Sec. 130-39. - Prohibited trees.

(a) Prohibited species; private. No private tree on the schedule of prohibited species of private trees shall be planted by any person on any land in the city.

(b) *Prohibited species; public.* No public tree on the list of prohibited species of public trees shall be planted by any person on any public land in the city.

(Ord. No. 53-95, § 1, 3-6-1995)

Sec. 130-40. - Tree planting.

(a) *Schedule of official public trees.* The City Manager or designee shall promulgate a schedule of official public trees, and only trees on that schedule may be planted as a public tree within the city unless the written authorization of the City Manager or designee is obtained prior to the planting.

(b) *Payment.* Public trees planted on a greenbelt shall be planted at the city's expense if the planting is required by the city. If a property owner requests the planting of a public tree on a greenbelt, that owner shall bear the cost of such a planting.

(c) *Restrictions.* The City Manager or designee shall approve the location of any public tree planting.

(Code 1981, § 31-24; Ord. No. 53-95, § 1, 3-6-1995)

Sec. 130-41. - Tree maintenance and protection.

(a) *Injuring; mutilating.* No person shall break, injure, mutilate, kill, destroy, set fire to or permit a fire to be set to any public tree or shrub. No person shall knowingly cause or permit to be caused the seepage, drainage, injection or emptying of any chemicals or other materials harmful or injurious to a tree. Normal treatment of lawns with weed killer and lawn fertilizer shall be exempt from this section unless the weed killer or lawn fertilizer used is contained on a list of prohibited chemicals published by any agency of the governments of the United States or the state.

(b) *Hanging material on.* No person shall use any public tree as an anchor. No person shall fasten or hang any material of any kind to any public tree. No person shall attach any electrical wire or insulation to any public tree. This subsection does not apply to residential holiday decorations or when special permission is given a residential owner by

the City Manager or designee. Such information as species, size, location and condition shall be used in judging individual requests.

- (c) *Permits.* The City Manager or designee shall cause the issuance of annual permits for public utilities to trim and remove trees within the city in such a manner as to keep the overhead lines of a public utility safe and accessible. These permits shall require reasonable prior notice to the city before any work is commenced thereunder except if the trimming or removal of a tree occurs under an emergency. The term "emergency" in this subsection means any event or occurrence which could not have been reasonably foreseen by the public utility in the reasonable exercise of care and foresight and which may cause damage to the overhead lines of the public utility.
- (d) *Replacement.* When the city removes a public tree, when possible, the tree will be replaced by the city on public land.
- (e) *Utilities.* Public utilities have the responsibility to maintain their overhead or underground pipes, conduit mains or lines in such a manner as to prevent any leakage therefrom. In the event of such a leakage, the public utility charged with maintaining the line as to prevent leakage shall be charged the cost of removal and replacement of any public or private trees which occur in order to repair the leak.

- (f) *Topping.* The topping of any public tree is prohibited without written authorization of the City Manager or designee.
 - (g) *Excavation.* No excavation or driveway may be placed within six feet of any public tree. These requirements shall be given to any person who applies for a permit to make such an excavation or build such a driveway.
 - (h) *Impeding passage of water and nutrients.* No person shall place in any street right-of-way or any greenbelt any sand, stone, concrete, brick or material of any other kind which will in any way impede the full and free passage of air, water or fertilizer to the roots of any public tree.
 - (i) *Unlawful interference.* No one shall interfere with persons acting under the direction of the City Manager or designee who are engaged in planting, mulching, maintaining, pruning, or removing any public tree, shrub or planting in any street or public place in the city.
 - (j) *Maintenance by owners.* All property owners shall maintain or treat such trees located upon their property so that the trees do not become a danger to the public or to adjacent property and so that the trees do not harbor dangerous or communicable pest infestations or tree diseases.
- (1) Any privately-owned tree, shrub or plant overhanging a sidewalk of the city shall be trimmed so that there shall be a clear space of 12 feet above the surface of such sidewalk;

- (2) No privately-owned tree, shrub or plant shall be allowed to encroach upon, under or over any sidewalk in a manner to interfere with the free passage of persons using such sidewalk;
- (3) When the City Manager or designee discovers that any privately-owned tree, shrub or plant is in violation of this section, they shall forthwith serve written notice upon the owner, their agent or the occupant of the subject private property. The notice shall describe the tree, shrub or plant, its location, the nature of the violation, and order the owner, agent, or occupant to trim, prune or remove the tree, shrub or plant. Any such notice shall be complied within 30 days after service of notice on the owner, agent or occupant of the subject private property, or within such additional time as the notice specifies; and,
- (4) All privately owned dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public shall be removed.
- (k) *Greenbelt.* On residential streets, the abutting owner or occupants shall maintain the greenbelt between the sidewalk and the street therein in conformity with this chapter. No person shall willfully injure or destroy any grass, flower or tree upon any such planting strip or throw papers, refuse, or any other thing thereon. No person shall drive an automobile, bicycle or any other vehicle upon or over any such planting strip.

(Code 1981, § 31-25; Ord. No. 54-95, § 2, 3-6-1995)

Sec. 130-42. - Tree removal.

(a) *Authorization.* No person may remove or cut down a public tree without written authorization from the City Manager or designee. Any person who violates this subsection shall be required, in addition to any other penalties imposed by this article or any other law, to replace all public trees so removed or cut down at the violator's expense.

(b) *City rights.* The city shall have the right to cause the removal of any private tree or any part thereof which meets the definition of the nuisance as set forth in section 78-1. In order to cause the removal of any such private tree, the city shall follow and fully comply with the procedures for abating such a nuisance as set forth in chapter 78.

(c) *Hazardous, infectious and nuisance conditions.* It shall be unlawful for the person owning or occupying property to possess or keep on said property trees, plants, vines or parts thereof in a dead or dying condition that may be considered a hazardous condition or serve as breeding places for infectious diseases or pests that can become destructive within the city.

(Code 1981, § 31-26)

Sec. 130-43. - Management of extreme infectious tree diseases or destructive tree pests.

For trees listed on the city's tree schedule for management of extreme infectious diseases or destructive tree pests:

- (a) A person, firm or entity shall only prune or trim trees being managed for infectious disease when the tree is dormant, regardless of location. Exceptions include pruning from storm damage, construction, utility work or accidents;
- (b) When a tree is not dormant the property owner, developer and/or contractor shall repair or cause to be repaired any injured trees being managed for infectious diseases;
- (c) Property owners, developers and/or contractors shall, to the extent known to them, report to the Department of Public Works any trees that exhibit symptoms of infectious disease or pest infestation and/or show signs of decline or death;
- (d) Private property owners, developers or contractors shall perform or cause to be performed upon trees confirmed to have an infectious disease or pest infestation one or several of the following practices:
 - (1) Trees not infected, but potentially root-grafted to a tree that was killed or diseased, should be treated by injection of an approved fungicide by a company licensed within the state and registered with the city;
 - (2) In lieu of or in addition to fungicide injections for disease management, infected trees may be treated by trenching, and if this options is elected, "MISS DIG" protocol must be followed;

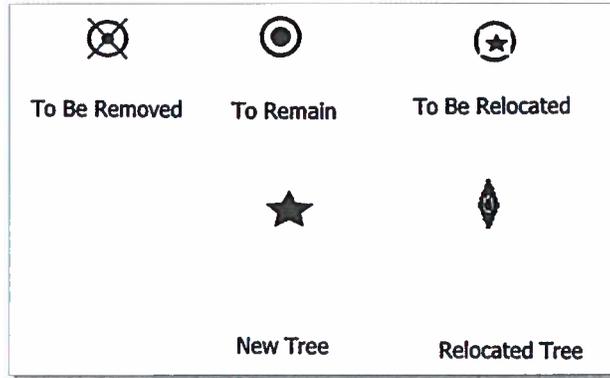
- (3) Dead trees that have an infectious disease shall be removed and properly disposed of; and,
- (4) Stumps left by removal trees that had infectious disease shall be promptly removed.
- (e) Responsibility for infectious trees in this section will reside with the property owner(s). In right-of-way situations, the responsibility will reside with the road commission for the county or the city. In utility easements, the relevant utility company shall perform all pruning or trimming when the trees are dormant.
- (f) Trees of all species and varieties determined by the City Manager or his designee to be hazardous, infectious or infested by pests, are hereby declared to be a public nuisance, and shall be removed within 30 days following notification to the property owner of the discovery of such infection. Any person given notice of the existence of such a tree may, within five days, may appeal to the City Manager or designee.
- (g) The City Manager or designee shall have the authority to enter upon private premises, as permitted by state and federal law, for the purpose of examining any trees, shrubs, plants, or vines for the presence of destructive pest infestations or plant diseases. No damages shall be awarded for the destruction of any tree, shrub, or plant or fruit or injury

to the same, if done by the City Manager or designee in accordance with this chapter.

Sec. 130-44. - Construction provisions.

(a) *Tree location survey.* Prior to development or construction that requires site plan review by the city or a demolition permit, a tree location survey and protection plan shall be submitted to the city for review and approval. All tree location survey and tree protection plans shall apply to public trees in the adjacent greenbelt and to all privately-owned trees that encroach onto a construction site. The plans shall meet the following requirements:

- (1) Indicate the location of all trees located on property and within 25 feet of abutting property lines including the entire greenbelt. Identify the species, size and drip line area;
- (2) Indicate the location of privately owned trees on adjacent property within 25 feet of the property line;
- (3) Clearly denote trees proposed to be planted, removed or relocated with a unique symbol in the tree survey and protection plan. Any relocated tree shall identify the new location. Required symbols for denoting trees are:



(4) If the tree(s) to be removed is not located within the proposed building footprint or within ten feet thereof, the reason for removal must be stated and approved by the City Manager or designee.

(5) Tree removal must be shown as necessary for the location of a building, structure, or site improvement and no reasonable or prudent alternative location exists.

(6) Tree location survey and protection plans are to be approved by the City Manager or designee.

(b) *Tree protection plan: city and privately-owned trees.* The current tree protection standards established by the International Society of Arboriculture shall be used as a guideline. The tree protection plan shall identify at a minimum:

(1) An indication of the size and type of fencing to be used during construction for any public trees;

(2) Clearly describe how all remaining trees are to be protected during demolition and construction. Privately

owned trees are limited to those that encroach within the open space of the construction site as required by the current set back regulations of the city, unless the developer or owner has been granted a variance by the board of zoning appeals. No protection is required for portions whose limbs or roots exceed the open space of the adjacent property where construction activities are proposed;

- (3) Clearly describe how public trees are to be relocated on a permanent basis, including the proposed use of tree wells, protective barriers, tunneling or retaining walls;
- (4) Clearly describe how the mitigation of removed trees would be accomplished, including the proposed location and care of replacement trees; and,
- (5) Indicate how privately-owned trees on adjacent property within 25 feet of the property line will be protected during demolition and construction. Protection afforded privately owned trees is for the construction period only. All disputes regarding privately owned trees between property owners after the certificate of occupancy is issued shall be a civil matter between those private property owners and not subject to the regulations of this article.
- (6) Where tree relocation or replacement is not feasible on the property where the activity is to be conducted, the

permit grantee shall pay into the city tree fund monies for tree replacement and a per tree amount representing the current market value for the tree replacement that would otherwise be required.

(7) These trees which cannot be reasonably expected to survive shall be approved for removal. The trees removed pursuant to this section shall be considered in the calculation replacement trees as follows. Whenever an approved tree survey and protection plan use allows the removal of trees eight-inch d.b.h. or greater, such trees shall be relocated or replaced by the permit grantee. All replacement trees shall be minimum 2 inches caliper or greater. Tree replacement shall be at the following ratio:

Removed Tree d.b.h. (In Inches)	Ratio Replacement for Removed Trees
8 < 11	1
> 11 < 20	2
> 20 < 29	3
> 30	4

(8) All replacement trees shall satisfy American Nursery and Landscape Association standards, and be:

- a) Nursery grown;
- b) State department of agriculture inspected;
- c) Tree spade transplanted while in the dormant state or, if not in the dormant state, having been balled and burlapped with a solid well-laced root ball when in the dormant state;
- d) No. 1 grade, with a straight unscarred trunk and a well-developed uniform crown (park grade trees are unacceptable);
- e) Staked, watered and mulched in accordance with standard planting practices and approved by the City Manager or designee.
- f) Guaranteed for one year, including labor to remove and dispose of dead material;
- g) Planted in accordance with the city tree planting detail and approved through inspection by the city.
- h) Trees must come from the approved list of city trees.

(c) *Greenbelt requirement.* All new build properties that do not have an existing tree on the greenbelt, shall plant an approved tree or pay into the tree fund to have one planted during the city fall tree planting.

(d) *Tree protection measures.*

(1) Prior to development activities adjacent to publicly owned trees, the developer or contractor shall erect protective barriers as approved by the City Manager or designee for the protection of those public trees. Protective barriers shall remain until all site activities have been completed. Protective barriers may not be relocated or removed without prior approval of the City Manager or designee. Protective barriers shall be freestanding and in no way adhered to or attached to the city-owned tree. Protective barriers shall be visible and strong enough to withstand pressure from anything piled against it.

(2) The following activities are prohibited in regard to activity within the root protection zone of public trees; changing grade, stripping topsoil, dumping or placing of solvents, building materials, construction equipment or soil deposits. Additional pruning of any portions of public trees required for clearance during construction must be performed by a certified arborist and requires prior approval from the City Manager or designee.

(3) If a city-owned tree is damaged during construction, it shall be reported immediately by the developer or property owner and evaluated by the City Manager or designee for recommended treatments to be applied. Any roots damaged during grading or development shall be exposed to sound tissue and cut cleanly with a saw. If temporary haul or access roads are required over root

areas of public trees, a roadbed of six inches of mulch shall be created to protect the roots. Maintenance of the six-inch depth is required during the time needed for such use.

(4) When protective barriers may be ineffectual in protecting roots in the root protection zone, the developer or contractor shall provide temporary buffers to prevent root damage as approved by the City Manager or designee. The developer or contractor shall maintain a 4—6" thickness for coverage by material for protecting roots until final grading has been completed.

(5) Building material or other debris must be at least six feet from public trees and must not be placed in public right-of-way.

(Code 1981, § 31-26)

Introduced on the First Reading at the Regular City Council Meeting on Monday, August 13, 2018.

Adopted on the Second Reading at the Regular City Council Meeting on Monday, September 17, 2018.



Daniel J. Terbrack, Mayor

Attest:



Phommady A. Boucher, City Clerk

