

CHAPTER 118 VEGETATION

ARTICLE I. IN GENERAL

118.1 Title

This ordinance shall be known as the *City of Birmingham Tree Preservation Ordinance*.

118.2 Purpose

The City of Birmingham has a tradition of developing a community that exemplifies desirable cultural, social, economic, and natural features. The City's urban forest has a profound impact on the distinctive character of the community. Trees greatly enhance the visual appeal of any urban area and encourage a sense of civic pride.

The City's trees improve air quality, reduce flooding and erosion, provide a barrier from wind and heat, and provide habitats for birds, and other wildlife. Trees enhance and stabilize the soil with their root systems resulting in soil conservation, erosion control, and the moderation of flooding effects. Natural lakeside and riverbank vegetation is essential for maintaining and protecting water quality through natural filtration, erosion control and habitat support.

In addition to the invaluable environmental benefits provided by trees, the urban forest also provides residents with recreational and educational opportunities. The shade created by mature, stately trees, contribute to a wide variety of recreational opportunities providing areas for physical exercise, and rest areas where individuals can escape from traffic, noise, and stress. Environmental education, the arts, biology, and other sciences are among the subject areas that can benefit from incorporating trees as a learning tool.

Trees protect public health in numerous ways, including but not limited to, the release of oxygen and the filtering of airborne pollutants, through the reduction of excessive noise, and through the cooling properties provided in the summer months. Trees and green spaces also increase the desirability of the urban area for relocation, thereby increasing property values.

The City is charged with protecting the health, safety, and welfare of the current and future residents of the City. This ordinance allows the City to have greater control over soil erosion; to reduce flooding, air, noise, and light pollution; to maintain or improve property values; and to promote a sense of civic pride. Protecting trees and woodlands, and their reproductive and regenerative capabilities, will allow for the preservation of a sustainable urban forest for future generations to benefit from.

This ordinance establishes the policies, regulations, and standards necessary to ensure that the city will continue to recognize the benefits provided by its urban forest. The provisions of this ordinance are intended to:

1. *Establish and maintain a healthy, vigorous, and well-managed community forest;*
2. *Establish provisions for protecting trees during construction activities;*
3. *Create a review and approval process to include the acceptable mitigation of removed or damaged trees;*
4. *Establish standards for the appropriate selection, location, and maintenance of trees on both private and public property to recognize maximum environmental and financial benefits while minimizing potential for damage to utilities and structures;*
5. *Promote the ongoing education of both residents and developers, fostering community support for the urban forestry program and encourage tree management on privately-owned property.*

ARTICLE II. TREES AND SHRUBS

118.3 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:

Alteration means:

1. the transplanting, pruning, or cutting of any tree in a manner that threatens to diminish the vigor of the tree
2. the filling, surfacing, grading, compacting, or changing the drainage pattern of the soil within the root protection zone.

Basal Flare means the increased diameter where the roots and trunk meet.

Building Area means that area of a parcel upon which, under applicable zoning regulations, a structure may be built.

Building Footprint means the two-dimensional configuration of an existing or planned building perimeter boundary as measured on a horizontal plane at ground level.

City shall mean the City of Birmingham.

Condition Rating shall mean the appraised health and appearance quality of a tree according to quantitative standards set for appraisal by the International Society of Arboriculture and the Council of Tree and Landscape Appraisers (see Table 1, Section 118.14).

Crown Spread shall mean the width of the distribution of the branches within a tree.

Development shall mean man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Diameter Breast Height (D.B.H.) means a tree's diameter in inches, measured four and one half feet (4' 6") above existing grade. On multi-stem trees, each stem over six inches (6") shall be measured, with the sum equaling the D.B.H. For unusual conditions, measurements will be made per standards set by the International Society of Arboriculture.

Dripline shall mean an imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

Grubbing means the effective removal of understory vegetation from a site.

Impact means the effect of activities on any area or trees.

Landmark Tree

1. Any tree that is included on the City of Birmingham Landmark Tree List as determined by Section 118.44.
2. Any tree not included Section 118.45 (Exempt Species), over twenty-four inches (24") D.B.H.

Owner shall mean any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind, including utilities, or government agencies conducting operations within the City.

Park includes all public parks having individual names, and all areas owned by the city, or to which the public has free access, excluding public right-of-ways.

Protected Tree means:

1. Any trees located on public property;
2. Any tree located on private property that is six inches (6") D.B.H. or greater in size, with the exception of those listed in Section 118.45 (Exempt Species);
3. A landmark tree.

Pruning means the normal seasonal trimming, shaping, thinning, or cutting of a tree, on branches or water sprouts, necessary to the health and growth of the tree.

Removal means the elimination, movement, or taking away of any tree from its present location.

Right-of-way A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation which is occupied, or intended to be occupied, by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, or other similar uses.

Root Protection Zone means the tree dripline. The Staff Arborist may partially expand or contract this zone depending on the species of the tree, and 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.

Staff Arborist means the designee(s) of the Director of Engineering and Public Services, who is assigned with the responsibilities of administration and enforcement of the City of Birmingham Tree Preservation Ordinance.

Tree means woody vegetation together with its root system, growing with a single or a multi-stemmed trunk system supporting a definitely formed crown and of a species which normally grows to an overall height of fifteen feet (15') or more, unless of a weeping growth pattern.

Tree Protection Plan means a written plan having text and/or graphic illustrations indicating the methods that are to be used to preserve protected and landmark trees during development.

Tree Service shall mean offering to the public the service of removing, transplanting, or the trimming of trees.

118.4 Responsibility

The Director of Engineering and Public Services shall be charged with the duty of interpreting and enforcing the provisions of this article under the supervision of the City Manager. The Director of Engineering and Public Services, or their designee, may act on behalf of the City Manager to interpret and enforce the provisions of this Section.

118.5 Jurisdiction

1. The City of Birmingham shall have control of all street trees, shrubs and other plantings now, or hereafter, in any street, park, public right-of-way or easement, or other public place within the City limits, and shall have the power to plant care for, maintain, remove, and replace such trees, shrubs and other plantings.
2. The City of Birmingham shall have the power to control the removal, alteration, and destruction of protected and landmark trees on private properties. Further, the City of Birmingham shall have the ability to ensure the protection of protected and landmark trees on public property during building and construction practices.

118.6 City Disclaims Liability

Nothing contained in this Section shall be deemed to impose any liability for damages or a duty of care and maintenance upon the city, its officers, employees, or their designees. Any owner of any private property shall have a duty to keep any trees upon their property and under their control in a safe, healthy condition.

118.7 Registration Required

No person shall engage in the business of providing tree services without first registering with the City Clerk.

118.8 Registration Fee; Bond

An application for a tree services registration shall be accompanied by a registration fee as established by resolution of the City Commission. In connection with the registration application a applicant shall sign an acknowledgement of receipt of a copy of Section 118 of the Birmingham City Code and an agreement to comply with the terms and provisions of said Section. No tree services registration shall be granted unless the applicant has also executed a bond in favor of the City that complies with the provisions of Section 26-38 of this Code. The sum of the bond shall be established by resolution of the City Commission and conditioned for the faithful performance of this Code and the laws of this State.

ARTICLE III. GENERAL PROVISIONS**118.9 Prohibited Actions**

The following requirements shall apply to all trees on public property and protected and landmark trees on private property

1. No person shall break, injure, abuse, mutilate, kill, or destroy any tree or set any fire, or permit any fire or the heat thereof to injure any portion of any tree;
2. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree
3. No electric wires or any other lines or wires shall be permitted to come in contact with any tree unless protected by approved methods, and no person shall attach any electric installations to any tree. All persons shall comply within twenty-four (24) hours after the Director of Engineering and Public Services, or their designee serves notice to protect, move, or cut off the electricity from any service line for the purpose of trimming or removal of any tree where such wire may interfere with the proposed work.

118.10 Interference with planting, maintenance, and removal unlawful

No person, firm, or corporation shall interfere with the Director of Engineering and Public Services or persons acting under their authority while engaged in planting, mulching, pruning or removing any tree, shrub or plant in any street, or public place within the city.

118.11 Emergency Removal

The Staff Arborist shall have authority to authorize the removal of protected or landmark trees in the event of an emergency, where such trees constitute a hazard to the health, safety, or well being of people, or structures. Such events include, but are not limited to, removal in the event of storm damage where a tree is endangering a utility line or building.

ARTICLE IV. TREE ALTERATION AND REMOVAL PERMITS

118.12 Notice of Prohibited Conduct

1. A Tree Alteration and Removal Permit shall be applied for and approved by the Staff Arborist before performing activities as described under this Section of the Ordinance.
2. It shall be unlawful for any person without a Tree Alteration and Removal Permit from the City to undertake any action or procedure or to replace, remove, injure or destroy any protected tree on any land within the City.

118.13 Tree Alteration and Removal Permits

The planting, removal, or alteration of the following trees is regulated by this Chapter and shall require a Tree Alteration and Removal Permit:

1. Landmark Tree: Removal or alteration of any landmark tree on any private property is prohibited without the prior issuance of a permit;
2. Protected Tree: Removal or alteration of any protected tree on any private property is prohibited without the prior issuance of a permit;
3. Public Property: Planting, removal, or alteration of any tree on public property is prohibited without the prior issuance of a permit, except that in cases of City action on City property, only the removal or alteration of a landmark tree shall require a permit.
4. On occupied property for which a valid certificate of occupancy (C of O) has been issued the removal of no greater than ten percent (10%) of the total number of trees, or two (2) trees, which ever is greater, on the property within a twelve (12) month period. This provision shall not apply to landmark trees.

118.14 Tree Condition Rating

The condition of a plant is determined by evaluating its present structure and health. Roots, trunk and scaffold branches are evaluated both for structure and for health, while small branches, twigs and foliage and/or buds are rated only for health. The chart below illustrates the scoring system and how the overall tree health percentage is obtained.

Scoring System:		Target Areas:	
No apparent problem(s)	4	Roots	0 – 4 points awarded
Minor problem(s)	3	Trunk	0 – 4 points awarded
Moderate problem(s)	2	Scaffold Branches	0 – 4 points awarded
Major problem(s)	1	Small Branches	0 – 4 points awarded
Extreme problem(s)	0	Foliage	0 – 4 points awarded
0 – 20 possible points		Multiply by five (5) to calculate health percentage	

Table 1. Health Condition Rating per International Society of Arboriculture Standards:

Class	Percent	Rating	Description
I	90-100	Excellent	Trees in this class are judged to be exceptional trees and possess the best qualities of the species. All have excellent form and very minor maintenance problems and are growing in a location which will enable them to achieve full mature shape.
II	70-89	Good	Trees in this class are judged to be high-quality trees with decent crown shape and little to no dead limbs or insect activity.
III	50-69	Fair	These trees are in general decent health, which may be brought into better condition with proper maintenance. They have few dead limbs, limited insect or disease activity, or slight nutritional deficiencies.
IV	25-49	Poor	Most trees in this group have the following problems: Large dead limbs as with as much as one-third (1/3) of the tree already dead; large cavities; drastic deformities; girdling roots; severe disease problems, or restricted growing spaces.
V	05-24	Very Poor	Trees in this group are extremely weak with irreversible problems such as severe decline in health, structural degradation, lethal disease or insect infestation with no hope for survival. These trees will have to be removed in the near future and may pose hazardous situations.
VI	0-04	Dead	Trees in this group are dead, potentially hazardous, and should be removed.

118.15 Tree Alteration and Removal Permits Applications

- A. *In the event a Tree Alteration and Removal Permit is sought in connection with work for which no building permit is required.*

The application for a Tree Alteration and Removal Permit shall contain:

1. Name, address, and phone number of applicant;
2. The commonly known address of the lot or property where the tree removal or alteration sought to be approved is located;
3. A written statement indicating the reason for removal or alteration of the Protected or Landmark Tree(s);
4. A general description of the Protected or Landmark Tree(s) to be removed or altered, including species, size (d.b.h.), location on property;
5. The name, address, and phone number of the contractor or other person who is proposed as having responsibility for the tree removal activities;
6. A Tree Alteration and Removal Permit fee set by ordinance of the City Commission and set forth in Appendix A of the Birmingham City Code, shall be required;

- B. *In the event a Tree Alteration and Removal Permit is sought in connection with construction or development necessitating review and approval of a site plan, or plat, building permit, or any other type of permit issued pursuant to the City Code.*

In addition to the requirements for a permit listed in Section 118.15A, the application for a Tree Alteration and Removal Permit also be accompanied by:

1. A tree location survey shall be included on site plans or as a separate document, and shall meet the requirements of Section 118.16 of this code;
2. If existing trees are to be relocated, the proposed location for such trees, together with a statement as to how such trees are to be moved, protected and/or stored during land clearance and construction, and how they are to be maintained after construction.

118.16 Requirements for a Tree Location Survey

A tree survey, whether submitted as part of a plat or site plan, or as a separate document, shall meet the following requirements:

1. All tree surveys shall indicate the location of all trees with a D.B.H. of six inches (6") or greater;
2. A tree survey shall indicate the location of landmark trees, protected trees, or any tree located on public property, within twenty-five feet (25') of abutting property lines, including the entire right-of-way;

3. Minimum Scale 1" = 20'. The scale must be the same as any submitted site plans;
4. Show dimensions of the parcel;
5. Clearly show existing and proposed structures;
6. Trees with a D.B.H. of six inches (6") for greater which are located on the site, or within twenty-five feet (25') of a property line are to be shown and numbered on the plan;
7. Existing grades shall be shown with spot grades at the base of each tree;
8. Trees to be removed or relocated are to be clearly denoted with a unique symbol. Any relocated trees shall also have the new location identified. Required symbols for denoting trees are:



To Be Removed



To Remain



To Be Relocated

9. The tree survey is to be signed and sealed by a registered land surveyor.

118.17 On-Site Visit

1. An application for a Tree Alteration and Removal Permit shall be verified by an on-site visit by the Staff Arborist;
2. Upon preliminary examination of the tree location survey and a site visit, the Staff Arborist may determine that a Tree Protection Plan is necessary.

118.18 Tree Protection Plan

Tree protection plans shall include, in writing, all prudent and feasible alternatives that would reduce or eliminate the impacts of development and construction on trees. The tree protection standards established by the International Society of Arboriculture shall be used as a guideline.

A tree protection plan shall identify, as a minimum:

1. Species, size, dripline area of all trees initially identified on the initial tree location survey;
2. Any proposed tree protection areas, including size and type of fencing to be used;
3. How trees to remain are to be protected during demolition and construction;
4. How trees to remain or to be relocated are to be protected on a permanent basis, including the proposed use of tree wells, protective barriers, tunneling, or retaining walls;
5. How the mitigation of removed trees will be accomplished, including the proposed location and care of replacement trees.

If the applicant fails to demonstrate that there are no prudent or feasible alternatives, as referenced above, approval of the Tree Alteration and Removal Permit shall be denied or tabled to allow the applicant to modify the plans to reduce or eliminate the impacts on trees.

118.19 Review Standards For Tree Alteration and Removal Permit Applications

- A. In the event a Tree Alteration and Removal Permit is sought for the removal of a protected tree, a Tree Alteration and Removal Permit shall be issued when the following conditions are met:
 1. The Staff Arborist shall review the Tree Alteration and Removal Permit application to verify that all required information has been provided;
 2. A Tree Alteration and Removal Permit shall be issued only in the event the Staff Arborist finds that all reasonable efforts have been undertaken to preserve existing protected trees;
 3. Building placement and driveway, walkway, and parking areas shall be designed in such a way as to avoid the unnecessary removal or alteration of protected trees and their root system;
 4. Drainage and Grading plans have been developed in such a way as to avoid the Root Protection Zone and the removal of protected trees wherever possible;
 5. Proposed placement of all utility installations, roads, transportation structures, or other facilities used in the service of the public to provide transportation, electric, gas, water, telephone,

telecommunication, or other services shall be shown on the Tree Location Survey. Every effort shall be made to protect existing protected trees;

6. The proposed tree removal does not threaten the public health or safety, or increase the risk of flooding or erosion on the subject or adjacent property, nor will it endanger a wetland or watercourse;
 7. The Staff Arborist may impose such conditions on the manner and extent of the proposed activity as are necessary to ensure that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment, or interference with natural resources and natural processes within the affected area and to ensure the intent of this Chapter will be fulfilled.
- B. In the event a Tree Alteration and Removal Permit is sought for the removal of a landmark tree:
1. It shall be a violation of this chapter for anyone to remove or cause to be removed a landmark tree with a condition rating greater than or equal to fifty percent (50%), except as allowed in this Section.
 2. An application, accompanied by a Tree Protection Plan, in accordance with Section 118.18, be submitted to the City Commission;
 3. In the absence of development, landmark trees shall not be removed unless determined by the City Commission, on the basis of the application and a Tree Protection Plan, pursuant to the guidelines established under Section 118.18 and other relevant information, that the tree should be removed because it has a condition rating under 50%, is hazardous, is a detriment to or crowding an adjacent protected tree, is deemed to be a potential danger to existing or neighboring property, or is an Exempt Species as per Section 118.45;
 4. In the case of development:
 - a. Landmark trees shall not be removed unless the trunk or basal flare of the landmark tree is touching or within the existing building footprint, or the City Commission, has determined, on the basis of the application and Tree Protection Plan, pursuant to the guidelines established under Section 118.18, and other relevant information, that the tree should be removed because it is dead, is hazardous, is deemed to be a potential danger to existing or neighboring property, is a detriment to or crowding an adjacent landmark tree, or is an Exempt Species as per Section 118.45;
 - b. If no building footprint exists, landmark trees shall not be removed unless the trunk of the tree is located in the building area, or the City Commission, on the basis of the application and a Tree Protection Plan, pursuant to the guidelines established under Section 118.18 and other relevant information, that the tree should be removed because it is dead, is hazardous, is deemed to be a potential danger to existing or neighboring property, is a detriment to or crowding an adjacent landmark tree, or is an Exempt Species as per Section 118.45;
 - c. If removal is allowed because the tree trunk is located in the building footprint, or the trunk or basal flare is in the building area, or that construction would result in the death of the tree, the tree removed shall be replaced in accordance with the standards outlined in Sections 118.41 and 118.42 of this code;
 - d. In the case of public improvement projects, proposed placement of all utility installations, roads, transportation structures, or other facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telecommunication, or other services, every effort shall be made to protect existing landmark trees;
 - e. Removal is permitted as part of project approval in the case where retention of the tree would result in reduction of the otherwise-permissible building area by more than twenty-five percent. In such a case, the approval shall be conditioned upon replacement in accordance with the standards in Sections 118.41 and 118.42.

118.20 Denial of Tree Alteration and Removal Permit

Whenever an application for a Tree Alteration and Removal Permit is denied, the permit applicant shall be notified, in writing, of the reasons for denial.

118.21 Permit Duration

1. For a Tree Alteration and Removal Permit submitted in connection with an application for plat or site plan approval or a building permit, a Tree Alteration and Removal Permit shall not be issued, nor shall the permit holder remove or cause the removal of any Protected or Landmark Tree until after final approval of the site plan, preliminary plat, or building permit has been obtained and, if applicable, the Director of Engineering and Public Services, or their designee, has approved construction and engineering plans for the proposed construction or development activity.
2. A Tree Alteration and Removal Permit shall remain in effect for one (1) year or the duration of the approved building permit, site plan, or plat, if any, whichever period is greater. The Staff Arborist may grant extensions to the Tree Alteration and Removal Permit for a period of time concurrent with any extensions of a building permit.

118.22 Consultants

The City may engage consultants to review and advise the City regarding Tree Alteration and Removal Permit applications, such as, but not limited to, a forester, certified arborist, landscape architect, planner, or engineer. The applicant shall be responsible for payment of all review expenses related to a consultant's review of the application.

118.23 Tree removal

Where an owner of property requests the removal of a protected or landmark tree on public property, the Staff Arborist is authorized to require that the owner of property requesting the removal assume all or any part of the costs of removing such tree. The Staff Arborist shall further require that tree replacement occur in accordance with Sections 118.X41 and 118.42.

ARTICLE V. PUBLIC LANDS**118.24 Permits for tree planting, care, removal on public lands**

1. The Staff Arborist shall have control over all trees, shrubs and plants in the streets and parks of the city, and is empowered to plant, prune, spray, treat, cultivate and preserve all trees and shrubs within the confines of the streets, parks, and public areas of the city;
2. No person shall prune, treat or plant any shrubs or trees upon the streets or parks without prior approval from the Staff Arborist;
3. No person shall cut or break down or destroy any trees or shrubs in the streets or parks at any time without prior approval from the Staff Arborist;
4. No person shall plant any shade or ornamental trees in the streets or parks without prior approval from the Staff Arborist, and then only if they are of a variety and size acceptable to the Staff Arborist;
5. No person shall have the right to plant any varieties of poplar trees, willow or box elders or other quick growing trees whose roots are likely to injure the sewers or heave the street or sidewalk surfaces.

118.25 Anchoring Prohibited

It shall be unlawful for any person to use any tree as an anchor and no material shall be fastened to or hung on any trees in any right-of way or park. This Section does not constitute a prohibition for the City to hang items in or on any tree as they see fit.

118.26 Placing materials on public property

No person shall place on public or private property any stone, brick, sand, concrete or other material which will in anyway impede the full and free passage of water, air, or fertilizer to the roots of any tree subject to the provisions of this article.

118.27 Lawn extensions

On residential streets, the abutting owner or occupant may maintain a planting strip on the lawn extension between the sidewalk and street in conformity with this article. No person shall willfully injure or destroy any grass, flower, tree, or shrub, upon any such planting strip or throw any papers, refuse, or other thing thereon. No person shall drive an automobile, or other motorized vehicle upon or over any such planting strip.

118.28 Spacing of shade trees and distances from curb and sidewalk

In all planting of shade trees in the right-of-way, such trees shall be spaced not less than forty feet (40') apart. Trees may be planted less than forty feet (40') from an existing tree in the right-of-way provided the existing tree has been approved for removal within a period of five years from date of planting of the new tree. The Staff Arborist may grant any owner of a single lot permission to have a tree planted closer than forty feet (40') from an existing tree in order to provide a shade or ornamental tree in front of the owner's lot.

118.29 Responsibilities of Property Owners

1. Any tree, shrub or plant overhanging the streets or highways of the city shall be trimmed so that the branches of such tree, shrub or plant shall not obstruct the light from any street lamp and so that there shall be a clear space of twelve feet (12') above the surface of such street or highway;
2. Any tree, shrub or plant overhanging a sidewalk of the city shall be trimmed so that there shall be a clear space of eight feet (8') above the surface of such sidewalk;
3. All dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public shall be removed;
4. No tree, shrub or other vegetation shall be allowed to encroach upon or over any sidewalk or in any other manner to obstruct the same so that it would interfere with the free passage of persons using such sidewalk;
5. When the Staff Arborist shall discover any tree, shrub or plant growing on private property is in violation of this Section, they shall forthwith serve a written notice upon the owner or his agent, or the occupant of the property, describing the tree, shrub or plant, its location, and the nature of the violation and order the owner, agent or occupant to trim or prune such trees to comply with this Section. Every such notice shall be complied with within thirty (30) days after service thereof on the owner, agent or occupant of the property upon which the encroaching tree, shrub or plant is located, or within such additional time as the notice specifies;
6. If, at any time during a period commencing thirty (30) days after the mailing of such notice, the Staff Arborist shall find that the owner, agent or occupant has failed to trim or prune such tree, shrub or plant, the Staff Arborist shall cause such tree, shrub or plant to be trimmed or pruned in compliance with this Section, bill the owner for the cost thereof, and shall at the end of the fiscal year report any such charges remaining unpaid to the city commission. Such unpaid charges, when thus reported, shall become a lien upon the property on which such work has been done and shall be assessed and collected in the same manner provided in the City Code where any cost is incurred in connection with a single lot or parcel of land.

118.30 Trees at street corners

1. Shrubs and bushes located on the clear vision triangle formed by two right-of-way lines at the intersection of two streets, and extending for a distance of twenty-five feet (25') each way from the intersection of the right-of-way lines on any corner lot within the city shall not be permitted to grow to a height of more than three feet (3') above the surface of the roadway, in order that the view of the driver of a vehicle approaching a street intersection shall be unobstructed.
2. Trees may be planted and maintained in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight feet (8') within such triangle; however, there shall be a clear space of twelve feet (12') above the surface of any street or highway.

118.31 Gas main leakage

Gas pipes or mains laid within any public right-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. If a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within twenty-four (24) hours. Any damage to trees, shrubbery, or grass, resulting from the escape of gas from a pipe or main shall be repaired and the cost of this work, including the cost of removal and replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.

118.32 Utilities

Utilities located within any public right-of-way, or on any public property, used to provide electric, gas, water, telephone, telecommunication, or other services, shall be maintained so as to avoid any damage to trees shrubbery, or grass. Any damage to trees, shrubbery, or grass, resulting from damage, maintenance, or repair of these utilities shall be repaired, and the cost of this work, including the cost of removal and replacement of any trees, shall be levied against the owner of the utility.

ARTICLE VI. HAZARDOUS, INFECTIOUS AND NUISANCE PLANTS**118.33 Hazardous, Infectious and Nuisance Conditions**

Plants or parts thereof in a dead or dying condition that may be considered a hazardous condition or serve as breeding places for infectious insects or diseases that can become destructive within the city, such as but not limited to the European Elm Bark Beetle, Oak Wilt fungus, Ash Yellows, Poison Ivy, Boxelder Bug, Asian Longhorn Beetle, Gypsy Moth caterpillar and certain basal or stem cankers. It shall be unlawful for the person owning property whereon the same is situated to possess or keep the same.

118.34 Inspection of premises

The Staff Arborist may enter upon private property at all reasonable hours for purposes of inspecting trees, shrubs, plants, or vines thereon and may remove such specimens as are required for purposes of analysis to determine whether or not the same are infected. It shall be unlawful for any person to prevent the Staff Arborist from entering on private property for the purpose of carrying out his duties under this Section or to interfere with the Staff Arborist in the lawful performance of his duties under the provisions of this article. No damages shall be awarded for the destruction of any infested or diseased tree, shrub, or plant or fruit or injury to the same, if done by the Staff Arborist, in accordance with this article.

118.35 Notice of nuisance

If trees on private property are found to be a hazard or infected and to be a nuisance under this article, the Staff Arborist shall give to the owner of the premises where such tree or trees are situated written notice of the nuisance, requiring the removal and destroying of such plant within a period of thirty (30) days following such notice. The removal and destroying of a nuisance or hazardous plant shall be under the direction and supervision of the Staff Arborist. Such notice shall also notify the owner of such premises that unless such plant is removed and destroyed in compliance with the terms thereof within such thirty (30) day period, the city will proceed with the removal and destroying of such plant, and assess the cost thereof against the property in accordance with the provisions of the City Code.

118.36 Service of notice

Service of notice prescribed by this Section shall be made upon the owner of the premises either by personal service or by certified mail, return receipt requested, addressed to the owner at his last known address as shown by the records of the city assessor. If the address of the owner as revealed by the records of the city assessor is different than the address of the premises upon which the subject plant is located and such premises are occupied, service of the notice shall also be made on the occupant of the premises by either personal service or first class mail.

When the Staff Arborist shall discover that any plant growing on private property within the city is afflicted with any hazardous and infectious insect infestation or tree disease, they shall forthwith serve a written notice upon the owner or their agent, or the occupant of the property, describing the plant, its location and the nature of the infestation or tree disease and ordering the owner, agent and occupant to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading thereof, specifying the measures required to be taken.

118.37 Management of Dutch Elm Disease and Oak Wilt

- a) Oak and Elm trees shall not be pruned or trimmed between April 1 and October 15 regardless of their location. Exceptions include pruning for storm damage, construction, utility work, or accidents.
- b) It shall be the responsibility of the property owner, developer, contractor to repair or cause to be repaired any oak or elm trees that are inadvertently injured between April 1 and October 15, by removal of exposed jagged surfaces followed by prompt sealing with a tree pruning sealer or latex paint. Such repair is to take place within hours of the injury.
- c) Oaks or Elms that exhibit symptoms of Oak Wilt or Dutch Elm Disease and show signs of decline or death shall be reported to the Department of Engineering and Public Services.
- d) Trees confirmed with Oak Wilt or Dutch Elm Disease shall be the responsibility of the property owner to perform or cause to be performed, one or several of the following practices:
 - i) 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 licensed company within the State of Michigan and registered with the City of Birmingham.
 - ii) Trenching may be a practice in lieu of or in addition to injections for disease management
 - iii) Dead oak and elm trees will be removed and properly disposed by chipping to less than 3 inches or removed to a disposal site for debarking, burning, or burial.
 - iv) Stumps left by removal of oak and elm trees shall be promptly removed or buried.
 - v) Responsibility for oaks and elms in this Section will reside with the property owner(s). In right-of-way situations the responsibility will reside with the Road Commission for Oakland County and the City of Birmingham. In utility easement locations, it shall be the responsibility of the utility company to schedule trimming between October 16 and March 31.

Plants of all species and varieties found to be hazardous, infectious or nuisances determined by laboratory analysis, are hereby declared to be a public nuisance, and shall be removed and destroyed within thirty (30) days following notification of the discovery of such infection. Any person given notice of the existence of a diseased tree may, within five (5) days, make application to the Staff Arborist for a permit to treat a diseased tree in conformance with a method of treatment which has been approved by the Staff Arborist. The Staff Arborist shall have the right to inspect the treatment to any hazardous, nuisance or diseased plant and if the failure to diligently comply with all necessary requirements and procedures, or if they shall determine that the treatment is unsuccessful, they shall give notice to the owner that the permit is revoked and the plant shall be removed.

ARTICLE VII. PROTECTION AND MITIGATION MEASURES

118.38 Minimum Tree Protection

1. Prior to development activities, the developer or builder shall be required to erect wooden barriers as approved by the Staff Arborist for the protection of all remaining trees;
2. Barriers shall remain until all site activities have been completed. Barriers may not be relocated or removed without the prior approval from the Staff Arborist;
3. Protective barriers shall be freestanding, and in no way adhered or attached to the tree;

4. The fencing material must be visible and solid enough to withstand the pressure from dirt piled up against it;
5. The protection fencing must be placed per the approved Tree Protection Plan. During construction no attachments or wires shall be affixed to any trees being protected;
6. No person may conduct any activity within the Root Protection Zone including (but not limited to) changing grade, stripping topsoil, placing solvents, building materials, construction equipment, or soil deposits within the Root Protection Zone. Additional tree pruning required for clearance during development activities must be performed by a qualified arborist and not by construction personnel;
7. If injury should occur to any tree during construction, it should be evaluated as soon as possible by a certified arborist or registered forester so that appropriate treatments can be applied. Any roots damaged during grading or development activities shall be exposed to sound tissue and cut cleanly with a saw. If temporary haul or access roads must pass over the root area of trees to be retained, a roadbed of six inches (6") of mulch shall be created to protect the soil. The roadbed material shall be replenished as necessary to maintain a depth a six inch (6") depth;
8. No excess soil, additional fill, liquids, or construction debris shall be placed within the Root Protection Zone of any protected tree;
9. Construction pruning and root pruning of Protected and Landmark Trees directly affected by construction must be approved by the Staff Arborist.

The following activities shall be encouraged in the Root Protection Zone:

1. During construction activities, mulching with wood chips to a depth of four to six inches (4"-6") shall be encouraged to assist in reducing compaction and loss of moisture. Mulching materials shall be untreated, unpainted, and approved by the Staff Arborist.
2. Irrigation, aeration, fertilizing, or other beneficial practices that have been specifically approved by the Staff Arborist for use within the Tree Protection Zone.

118.39 Root Buffers

1. When areas under a tree canopy cannot be fenced, a temporary buffer shall be required and shall cover the root protection zone;
2. The staff arborist shall approve the thickness, coverage, and material of all root buffers;
3. The thickness, coverage, and material of a root buffer shall be maintained until final grading stages have been completed.

118.40 Excavations near trees

1. Excavations, driveways, and driveway approaches shall not be placed within six feet (6') of any tree without prior approval from the Staff Arborist. Any person making such excavation or construction shall guard any tree within six feet (6') thereof with a good substantial wooden frame box to be approved by the Staff Arborist, and all building material or other debris shall be kept at least four feet (4') from any tree without a tree protection plan approved by the Staff Arborist.
2. All persons desiring to make such excavation or construction are required to have a Tree Alteration and Removal Permit.

118.41 Tree Replacement Guidelines

1. All replacement trees shall measure a minimum of two and one half inches (2.5") in caliper for deciduous trees or six feet (6') in height for evergreens. Replacement trees shall have shade potential and other characteristics comparable to the trees proposed for removal and shall be State Department of Agriculture Nursery Grade No. One (1) stock or better. Replacement trees shall be mulched and guaranteed for two (2) years by the property owner.
2. All tree replacements shall be made within twelve (12) months of the date of the removal of any trees for which such replacement is required, or prior to the issuance of a final certificate of occupancy.
3. Trees required to be planted in accordance with this Section shall be in place and properly supported prior to the issuance of a final certificate of occupancy.
4. Applicant shall be required to replace trees originally indicated and intended to be saved when such trees are excessively damaged or removed in violation of an approved site plan.

5. The tree replacement schedule will be as follows:

Tree Condition	Percentage of D.B.H. Replacement
Excellent	100%
Good	75%
Fair	50%
Poor, Very Poor, Dead	0%

118.42 Replacement Plan Requirements

1. Where it is not feasible and desirable to relocate or replace trees on-site, relocation or replacement may be take place at another approved location within the City.
2. Where it is not feasible and desirable to relocate or replace trees on-site or at another approved location within the City, the Tree Alteration and Removal Permit grantee shall pay into the City Tree Fund a replacement amount calculated according to guidelines established by the International Society of Arboriculture. The City shall use the City Tree Fund for the purpose of maintaining and preserving wooded areas, for planting and maintaining trees within the City and for expenses related to the administration and enforcement of this Section.

118.43 Tree Replacement Exceptions

The following conditions shall be exempt from the replacement requirements established in Section 118.41:

1. The removal, alteration, or transplanting of Exempt Species identified in Section 118.45;
2. The removal of protected and landmark trees which have a condition rating of less than fifty percent (50%), per Section 118.14, as determined by the Staff Arborist;
3. The removal of dead trees where the damage resulted from an accident or non-human cause;
4. The pruning or care of trees provided that the work is accomplished in accordance with standardized forestry and horticultural practices as established by the International Society of Arboriculture;
5. The removal or alteration of trees necessary by emergency situations such as tornado, windstorm, flooding, freezing, infestation, or other man-made or natural disasters, where it would be contrary to the interest of the public, or to the health and safety of one or more persons, to defer cutting pending submission and processing of a permit application;
6. Tree removal in order to perform maintenance, repair, or construction of lawfully located roads, sewers, structures, and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telecommunication, or other services, provided that such roads, sewers, structures, or facilities are not materially changed or enlarged, and provided that the work in conducted using best management practices to ensure that existing protected and landmark trees are not adversely impaired.
7. On occupied property for which a valid certificate of occupancy (C of O) has been issued the removal of no greater than ten percent (10%) of the total number of trees, or two (2) trees, which ever is greater, on the property within a twelve (12) month period. This provision shall not apply to landmark trees.

ARTICLE VIII. LANDMARK AND EXEMPT SPECIES

118.44 Designation of landmark trees

The following trees are considered landmark trees in the City of Birmingham:

Species (Common Name)	(Scientific Name)	D.B.H. at 4.5 feet
American Hornbeam / Blue Beech	<i>Carpinus caroliniana</i>	6"
Arborvitae	<i>Thuja spp.</i>	18"
Ash	<i>Fraxinus spp.</i>	24"

Basswood	<i>Tilia spp.</i>	18"
Beech, American	<i>Fagus grandifolia</i>	18"
Beech, Blue / American Hornbeam	<i>Carpinus caroliniana</i>	6"
Birch	<i>Betula spp.</i>	18"
Black Alder	<i>Alnus glutinosa</i>	12"
Black Gum	<i>Nyssa sylvatica</i>	12"
Bradford Pear	<i>Pyrus spp.</i>	12"
Buckeye / Horsechestnut	<i>Aesculus glabra / hippocastanum</i>	20"
Catalpa	<i>Catalpa spp.</i>	24"
Cedar, Red	<i>Juniperus virginiana</i>	12"
Chestnut	<i>Castanea spp.</i>	16"
Crabapple	<i>Malus spp.</i>	12"
Dogwood, Flowering	<i>Cornus spp.</i>	8"
Elm	<i>Ulmus spp. (except pumila)</i>	24"
Fir	<i>Abies spp.</i>	24"
Ginkgo (male only)	<i>Ginkgo biloba</i>	18"
Hawthorne	<i>Crataegus spp.</i>	12"
Hackberry	<i>Celtis occidentalis</i>	18"
Hemlock	<i>Tsuga spp.</i>	18"
Hickory	<i>Carya spp.</i>	18"
Honeylocust	<i>Gleditsia triacanthos</i>	24"
Hophornbeam / Ironwood	<i>Ostrya virginiana</i>	10"
Horsechestnut / Buckeye	<i>Aesculus hippocastanum / glabra</i>	20"
Ironwood / Hophornbeam	<i>Ostrya virginiana</i>	10"
Kentucky Coffeetree	<i>Gymnocladus dioicus</i>	20"
Larch / Tamarack	<i>Larix spp.</i>	12"
London Plane / Sycamore	<i>Platanus spp.</i>	24"
Maple	<i>Acer spp.</i>	24"
Oak	<i>Quercus spp.</i>	24"
Pine	<i>Pinus spp.</i>	24"
Princess Tree / Royal Paulownia	<i>Paulownia tomentosa</i>	18"
Redbud	<i>Cercis canadensis</i>	8"
Royal Paulownia / Princess Tree	<i>Paulownia tomentosa</i>	24"
Sassafras	<i>Sassafras albidum</i>	18"
Serviceberry	<i>Amelanchier spp.</i>	8"
Spruce	<i>Picea spp.</i>	24"
Sweetgum	<i>Liquidambar styraciflua</i>	18"
Sycamore / London Plane	<i>Platanus spp.</i>	18"
Tamarack / Larch	<i>Larix spp.</i>	12"
Tulip Poplar	<i>Liriodendron tulipifera</i>	24"
Walnut	<i>Juglans spp.</i>	24"
Wild Cherry	<i>Prunus spp.</i>	18"
Witch Hazel	<i>Hamamelis virginiana</i>	8"
Any species not included in Section 118.45, over 24"		

118.45 Exempt Species

The following trees shall be considered Exempt Species, as such, these the removal or alteration of these species do not require a Tree Alteration and Removal Permit, nor are the subject to the Replacement Requirements of Section 118.41. This Section shall not preclude Exempt Species for the purpose of floodplain management.

Common Name	Scientific Name	Problem
Boxelder	<i>Acer negundo</i>	Fast growing weak wooded
Cottonwood / Poplar	<i>Populus spp.</i>	Fast growing weak wooded
Silver Maple	<i>Acer saccharinum</i>	Weak wooded, storm damage
Tree of Heaven	<i>Ailanthus altissima</i>	Weak wooded, aggressive
Mulberry	<i>Morus spp.</i>	Litter, aggressive
Poplar / Cottonwood	<i>Populus spp.</i>	Fast growing weak wooded
Willow	<i>Salix spp.</i>	Weak wooded, storm damage
Siberian Elm	<i>Ulmus Pumila</i>	Weak wooded, storm damage
Buckthorn	<i>Rhamnus spp.</i>	Invasive Species

ARTICLE IX. APPEALS

118.46 Appeal Authorized

Any permit applicant who is aggrieved by the denial of a Tree Alteration and Removal Permit may request an appeal of the decision to the City of Birmingham Commission. Request for appeal must be filed within ten (10) days following the grant or denial. The City Commission shall within twenty (20) days affirm, modify, or reverse the determination of the Staff Arborist.

The appellant shall file with the Staff Arborist and with the City Commission, a notice of appeal specifying the grounds therefore. With each notice of appeal filed, there shall be paid a fee in the amount set forth in Appendix A of the Birmingham City Code, to cover the city's cost of handling such appeal, provided that such fees may be returned or retained after hearing at the discretion of the City Commission. The Staff Arborist shall forthwith transmit to the City Commission a summary report of all previous action taken. The City Commission may at its discretion call upon the Staff Arborist to explain their action. The final disposition of such appeal shall be in the form of a resolution, either reversing or affirming, wholly or partly, the decision of the determination appealed from. In order to find for the appellant, five members of the City Commission must concur.

118.47 Decision Final

The decision of the City Commission shall be final unless an appeal to Oakland County Circuit Court is taken within twenty (20) days from the date of the Commission's decision.

ARTICLE X. ENFORCEMENT

118.48 Enforcement and Administration

This Chapter shall be enforceable by such enforcement official(s) as the City Manager may appoint and authorize.

To ensure enforcement of this Chapter and the approved plan for tree removal and replacement, various inspections may be performed at the site at the direction of the City. A permit holder shall not interfere with or prevent such inspection(s), and the permit holder will be responsible for any inspection fees.

The City shall have the authority to promulgate additional administrative rules, regulations, and procedures that are consistent with the provisions of this Chapter in order to implement and administer this Chapter.

118.49 Exceptions

The City Commission, or their 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 conditions the City Commission deems necessary or appropriate to further the public interest in tree protection.

Persons seeking an exception shall submit an application for exception on forms prescribed by the Staff Arborist, pay a fee established by Appendix A of the City Code, and provide such additional information as may be required by the Staff Arborist.

118.50 Sanctions, Remedies, Penalties.

The City may issue a stop work order or withhold issuance of certificates of occupancy, permits or inspections until the provisions of this Chapter, the Tree Alteration and Removal Permit, or any conditions attached thereto, have been fulfilled.

Any person who removes or causes detrimental damage to a Landmark Tree shall be responsible for a misdemeanor. Any person who removes or causes damage to a non-exempt Protected Tree or violates any provision of this Chapter or any term or condition of a Tree Alteration and Removal Permit shall be subject to the penalties, sanctions and remedies prescribed in Chapter 1 General Provisions, Section 1-9 of this code.

In addition to the penalties, sanctions, and remedies prescribed in Chapter 1 General Provisions, Section 1-9 of this code, where a violation results in the removal, or detrimental damage to a protected or landmark tree, the violation may be additionally punished by a fine equivalent to the value of the tree as determined by the Staff Arborist, in accordance with the guidelines established by the International Society of Arboriculture.

Each violation of this Chapter or unauthorized removal of a Protected Tree shall be deemed a separate offense.

Any act performed or perpetrated in violation of this Chapter is declared to be a nuisance per se, and the City may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.

Section 118.50 – Alternative Language

The City shall issue a stop work order or withhold issuance of certificates of occupancy, permits or expectations until the provisions of this Chapter, the Tree Alteration and Removal Permit, or any conditions attached thereto, have been fulfilled.

Any person who removes or causes detrimental damage to a Landmark Tree shall be responsible for a misdemeanor subject to the penalties, sanctions, and remedies prescribed in Chapter 1 General Provisions, Section 1-9 of this code.

In addition to the penalties, sanctions, and remedies prescribed in Chapter 1 General Provisions, Section 1-9 of this code, where a violation results in the removal, or detrimental damage to a Landmark Tree, the violation shall be additionally punished by a fine equivalent to the value of the tree as determined by the Staff Arborist, in accordance with the guidelines established by the International Society of Arboriculture.

Any person who removes or causes damage to a non-exempt Protected Tree or violates any provision of this Chapter, or any term or condition of a Tree Alteration and Removal Permit shall be responsible for a civil infraction and shall pay a civil fine in an amount equal to:

For a first offense, a civil fine of \$100.00;

For a second offense, a civil fine of \$250.00;

For any additional offenses, a person shall be responsible for a misdemeanor subject to the penalties, sanctions and remedies prescribed in Chapter 1 General Provisions, Section 1-9 of this code.

Each violation of this Chapter or the unauthorized removal of a Landmark Tree or a Protected Tree shall be deemed a separate offense

Any act performed or perpetuated in violation of this Chapter is declared to be a nuisance per se, and the City may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.

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