

CITY OF AVON - CHAPTER 1028
Municipal Tree Ordinance

EDITOR'S NOTE: This chapter, previously titled Trees, was repealed and re-enacted in its entirety by Ordinance No. , passed _____, 2021.

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CROSS REFERENCES

Power to regulate shade trees - see Ohio R.C. 715.20

Assessments for tree planting or maintenance - see Ohio R.C. 727.011

Injury or destruction - see GEN. OFF. 642.06

Subdivision improvements - see P. & Z. 1248.08

1028.01 PURPOSE; TITLE.

The purpose of this chapter is to promote the public health, safety and general welfare through the preservation, replacement, removal and planting of trees native to our area in order to lessen air pollution, intercept airborne particulate matter, increase and support biodiversity, reduce noise and light glare, moderate air temperature, moderate storm water runoff, reduce erosion and sedimentation, maintain wildlife habitats, provide visual screening, provide natural shading, protect property values and enhance the natural beauty of the community.

1028.02 APPLICABILITY.

- (a) The regulations of this Chapter shall apply to all lands in the Municipality except as exempted in subsection (d) hereof.

- (b) No land shall be cleared of trees nor shall any tree with a DBH of eight (8) inches or greater be cleared or removed without first obtaining written permission of the Director of Public Service pursuant to the provisions of this Chapter.
- (c) All development plans, subdivision plans, and new construction shall comply with the requirements of this Chapter and Chapters 1228 and 1244.
- (d) The following shall be exempt from the regulations of this Chapter:
 - (1) The removal of dead, diseased, or damaged trees.
 - (2) Any tree on public property or within street right-of-way.
 - (3) The removal of trees necessary for the construction, operation, and maintenance of public streets, water lines, sanitary sewers, storm sewers and drainage facilities.
 - (4) The removal of trees necessary for the installation, maintenance, and repair of overhead utilities or underground utilities.
 - (5) The removal of trees in time of emergency or which pose a potential danger.
 - (6) The removal of trees by an individual single-family/two-family homeowner on their individually owned parcel.

1028.03 DEFINITIONS.

Only for the purposes of interpreting this chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein; words used in the singular include the plural.

- (a) "Arboriculture" means and includes the trimming, spraying, pruning, maintaining and any other care or work intended for the strengthening of trees and the removal and prevention of tree pests, blights and diseases of all kinds. (Ord. 29-61. Passed 6-14-61.)
- (b) "Buffer" means an area established to separate different uses and/or zoning districts through the use of natural vegetation, trees, landscaped mounds and fences. (See also Chapter 1294)
- (c) "Caliper" means the diameter in inches of trees measured at the height of six (6) inches above the ground for trees of four (4) inches in diameter and under; measured twelve (12) inches above the ground for trees over four (4) inches in trunk diameter.
- (d) "Conifer" means a tree with needle leaves and woody cone fruit.
- (e) "Criticalroot zone (CRZ)" means the circular area surrounding a tree in which the tree's roots critical to its survival usually will be found, and which should be protected. The radius of the CRZ in feet is typically 1.5 times the DBH in inches. By way of example, if a tree's DBH is 10 inches then the CRZ is 1.5 times 10, resulting in a CRZ radius of 15 feet. This formula is particularly useful in dealing with trees that have been growing in a forest or that naturally have a narrow growth habit. Recognizing that the root zone varies with tree variety, the actual radius for the critical root zones shall be approved by the Service Director after consultation with a certified arborist.
- (f) "Deciduous" means a tree which sheds leaves in winter or fall.
- (g) "Diameter at breast height (D.B.H.)" means the diameter in inches of a tree measured four and one-half (4½) feet above the existing grade.
- (h) "Emergency" means the immediate necessity for the preservation of public peace, health, safety and welfare.
- (i) "Evergreen" means trees which maintain their leaves year-round including broad leaf and conifer evergreens.

- (j) "Grubbing" means the removal of understory vegetation which does not remove any trees with a D.B.H. of four inches or greater.
- (k) "Large trees" means those trees attaining a height of forty-five (45) feet or more.
- (l) "Medium trees" means those trees attaining a height of thirty (30) to forty-five (45) feet.
- (m) "Municipality" means the City of Avon, County of Lorain, State of Ohio.
- (n) "Park" means all public parks within the Municipality.
- (o) "Perimeter landscaping" means the use of landscaping within the landscaped buffer area and the front, side and rear yards in which no off-street parking is permitted.
- (p) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (q) "Private property" means all grounds not owned by the Municipality.
- (r) "Protective barriers" means Structural measures, such as fencing or berms, installed prior to construction for the purpose of preventing damage to trees during construction.
- (s) "Public places" means all grounds owned or controlled by the Municipality.
- (t) "Public trees" means all shade and ornamental trees now or hereafter growing on a tree lawn or any public place where otherwise indicated.
- (u) "Small trees" means those attaining a height of twenty (20) to thirty (30) feet.
- (v) "Street" and "highway" mean the entire width of every public way or right of way when any part thereof is open to use by the public, as a matter of right, for purposes of vehicular and pedestrian traffic. See also 1246.04.
- (w) "Topping" is the severe cutting back of limbs to stubs larger than three (3) inches in diameter so as to remove the normal canopy and disfigure the tree.
- (x) "Tree" means a self-supporting woody plant usually having a single trunk, which has the potential of a D.B.H. of at least two (2) inches and a height of thirteen (13) feet or more at maturity.
- (y) "Tree lawn" means that part of a street or highway, not covered by a sidewalk or other paving, lying between the property line and that portion of the paved street or highway usually used for vehicular traffic.
- (z) "Tree Preservation Plan" means a plan drawn at a scale of not less than 1" = 50' prepared by a landscape architect or tree forester identifying and locating all existing trees or clumps of trees eight inches or greater, trees to be removed, the method of preservation or protection and all replacement or new trees to be planted.
- (aa) "Understory" means underbrush or undergrowth, and is comprised of plant life growing beneath the forest canopy without penetrating it to any great extent, but above the forest floor. Only a small percentage of light penetrates the canopy so understory vegetation is generally shade-tolerant.

1028.04 AUTHORITY OF SERVICE DIRECTOR.

The Director of Public Service, in consultation with a certified arborist, is hereby given full jurisdiction, authority, control, supervision and direction of all trees which now exist or which may hereafter exist in the Municipality, and all trees which exist on private property when such trees constitute a menace to the residents of the Municipality. The Service Director is hereby given the power to grant any permission required by this chapter and may delegate any and all of their powers and duties set forth herein. (Ord. 29-61. Passed 6-14-61.)

1028.05 CITIZENS TREE COMMISSION. See ACO Chapter 277

1028.06 REPLACEMENT OF TREES.

Any person or property owner granted permission to remove a tree from a tree lawn or other public place shall replace the removed tree or trees with a species designated in Section 1028.17. Replacement shall occur within a reasonable amount of time. The person or property owner shall bear the cost of replacing all trees removed. Projects initiated by the Municipality shall have the replacement costs included in the project costs. Trees removed by the Municipality may be replaced. Replacing trees in the same location is not necessary and sometimes not practical.

1028.07 PRUNING OF PUBLIC TREES; OBSTRUCTIONS.

The Director of Public Service, in consultation with a certified arborist, shall have the right to prune public trees in such manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct the vision of traffic signs or obstruct the view of any street intersection. The Municipality shall have the right to remove all public trees which are dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. Minimum clearances shall be maintained for any overhanging portion over sidewalks, streets and truck thoroughfares.

1028.08 TOPPING OF TREES PROHIBITED.

No person, firm or Municipal department shall top any public tree. Public trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Service Director.

1028.09 TRIMMING OF TREES ON PRIVATE PROPERTY.

All trees standing upon private property in the Municipality having branches projecting into public highways or public places shall, and under the supervision of the Director of Public Service in consultation with a certified arborist, be kept trimmed by the owner or occupant of such private property to such an extent that the lowest branches of such trees shall not come within nine (9) feet of the ground where they overhang any public sidewalk, public place or public highway. The Municipality shall advise property owners of the need for pruning or removal of any trees on private property within the Municipality when such tree(s) constitutes a hazard to public property or to any person using said public property or to any person or public property. If, after giving reasonable notice to the property owner, the hazard continues, the Municipality shall prune or remove the tree(s) and invoice the property owner for the cost. In the event that the property owner fails to pay, the amount charged to the property owner shall be a lien on the property and said amount shall be certified by the Finance Director to the County Auditor, to be placed on the tax duplicate and collected the same as other taxes as provided by law.

(Ord. 29-61. Passed 6-14-61.)

1028.10 ABUSE AND/OR MUTILATION OF PUBLIC TREES.

Unless specifically authorized by the Service Director, no person shall intentionally damage, cut, carve, transplant, whether above or below ground, or remove any public tree, attach any rope, wire, nail, advertising poster or other contrivance to any public tree, allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them, or set fire to any

public tree or permit any fire to burn when such fire or the heat therefrom will injure any portion of any public tree. No person shall pour salt water or a chemical or chemicals upon any street in such a way as to injure any tree planted or growing thereon. The Municipality shall not be restricted in the use of anti-icing materials.

1028.11 PROTECTION OF TREES NEAR CONSTRUCTION WORK.

Except in situations where the Municipality is engaging in stormwater control measures, ditch maintenance, public sanitary sewer or waterline work:

(a) All trees on tree lawns or in other public places near any excavation, construction or renovation of any building or structure, or any street work, shall be guarded with a protective device such as a substantial fence, frame or box not less than four (4) feet high and eight (8) feet square or placed at a distance in feet from the tree equal to the diameter of the trunk in inches, measured at a trunk height of approximately four and one-half (4½) inches from the ground, (D.B.H.), whichever is greater, and all building material, dirt or other debris shall be kept outside the barrier. The protective device must be structurally sound and capable of protecting the trees from all expected encroachment by debris and machinery associated with said excavation and/or construction.

(b) No person shall excavate any ditches, tunnels or trenches or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit therefor from the Service Director.

1028.12 PLACING OF MATERIAL INJURIOUS TO TREES ON PUBLIC PROPERTY.

No person shall deposit, place, store or maintain upon any public places any stone, brick, sand, concrete or other materials which may impede the free passage of water, air or fertilizer to the roots of any tree growing therein, except by written permit of the Service Director.

1028.13 MOVING OF TREES; DEPOSIT REQUIRED.

All moving of trees upon any public place in the Municipality made necessary by the moving of a building or other structure or any other private enterprise shall be done under the supervision of and with the written permission of the Service Director, or their designee, and at the expense of the applicant or person seeking the removal of such tree. Such applicant, as one of the conditions of obtaining such permission, shall deposit with the Municipality such sum in cash as the Director may determine and specify to cover all of the cost of moving and replacing such tree, if the conditions require the replacement thereof. (Ord. 29-61. Passed 6-14-61.)

1028.14 NOTICE TO CORRECT; SERVICE; NONCOMPLIANCE; REMEDY OF MUNICIPALITY.

(a) Should any person or persons owning real property bordering on a tree lawn or public place fail to maintain trees as provided in this Chapter, the Service Director shall order such person or persons to comply with the requested maintenance within thirty (30) days of the date set forth in the written notice.

(b) The order provided for herein shall be served by ordinary mail to the property address and the tax mailing address of the property owner (unless both are the same) from records available through the Lorain County Treasurer's Office. The act of sending the notice by ordinary mail completes the notice requirement herein.

(c) If the person or persons to whom an order is directed fails to respond or comply within the specified time, it shall be lawful for the Municipality to perform the requested maintenance and assess the property owner for the cost of services rendered. (See Section 1028.19(c))

1028.15 EMERGENCIES.

In the case of officially declared emergencies, such as windstorms, ice storms or other disasters, the provisions of this chapter shall be waived by the Service Director so that said provisions will in no way hinder public and/or private work to restore order in the Municipality. Necessary emergency activity for repair of underground utilities to assure landowner services does not require written permission. After the emergency is abated, any activity which resulted in damaging, pruning or removal of trees, shrubs or hedges in a tree lawn or public place must be communicated to the Service Director within a reasonable amount of time.

1028.16 INTERFERENCE WITH THE DIRECTOR OF PUBLIC SERVICE OR AGENT.

No person shall hinder, prevent, delay or interfere with the Director of Public Service or their designated representative (e.g., a certified arborist) while any such person is engaged in carrying out the execution or enforcement of this chapter; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the Municipality.

1028.17 PERMITTED TREES.

(a) All trees and vegetation planted on public property shall be common to northeast Ohio or similar climates, in good condition and properly installed using accepted planting procedures. New trees shall be staked, watered and mulched.

(b) New trees planted to meet the minimum tree standards and buffering requirements shall be at least two inches in caliper and at least five feet in height.

(c) Permitted trees: See Appendix A for a list of permitted trees.

1028.18 PROHIBITED TREES.

Prohibited trees: See Appendix B for a list of prohibited trees. Prohibited trees shall not be planted on public property or in private drainage easements.

1028.19 EXCEPTIONS, VARIANCES AND LIENS

(a) The Service Director, in consultation with a certified arborist may make exceptions to the regulations in this chapter in order to protect and improve the selected trees in the Municipality. The Service Director may grant written permission for tree removal if such tree removal is not contrary to the spirit of the chapter, presents an unnecessary hardship or is deemed an emergency.

(b) Any disagreement with any decision made by an administrative official in the implementation of this chapter can be appealed to the Board of Zoning Appeals as provided in Chapter 1236. The burden of proof is on the appellant.

(c) In any instance where the Municipality is required to take action and incur expense due to the failure of a private property owner or their contractor or agent take action required under this chapter, the amount expended by the Municipality shall be a lien on that property and said

amount shall be certified by the Finance Director to the County Auditor, placed on the tax duplicate and collected the same as other taxes as provided by law.

1028.20 CONFLICTS.

Nothing herein is intended to detract from the requirements set forth in Chapters 252, 277, 642, 1031, 1050, 1051, 1052, 1062, 1064, 1222, 1228, 1232, 1244, 1248, 1270, 1274, 1284, 1290, 1292, 1294, or 1484 of the Avon Codified Ordinances. In the event of a conflict, the more stringent provision shall apply. Whenever possible, conflicting or overlapping sections should be construed to further the intent of this legislation.

1028.21 MASTER TREE PLAN.

Within one (1) year after passage of this legislation, the Tree Commission shall recommend to City Council a Master Tree Plan for the Municipality. Said Master Tree Plan shall meet all the qualifications necessary to comply with Tree USA criteria.

1028.99 PENALTY.

Whoever violates any express prohibition set forth in this chapter shall be guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in General Offences Code of the Avon Codified Ordinances, Chapter 698. A separate offense shall be deemed committed on each day such violation continues.

APPENDICES

CITY OF AVON

36080 Chester Road
Avon, OH 44011
www.cityofavon.com

Richard R. Varga, Certified Arborist

APPENDIX A**Tree Recommendations**

<u>Common Name</u>	<u>Botanical Name</u>
Paperback Maple	Acer Griseum
State Street Maple	Acer miyabei Morton
Armstrong Red Maple	Acer rubrum Armstrong
Brandywine Red Maple	Acer rubrum Brandywine
Summer Sensation Red Maple	Acer rubrum Summer Sensation
Autumn Brilliance Serviceberry	Amelanchier grandiflora Autumn Brilliance
European or Common Hornbeam	Carpinus betulus Frans Fontaine
Katsura	Cercidiphyllum japonicum
Crimson Cloud Hawthorn	Crataegus laevigata Crimson Cloud
Autumn Gold Ginkgo biloba or Maidenhair	Ginkgo biloba Autumn Gold
Princeton Sentry Ginkgo biloba or	Ginkgo biloba Princeton Sentry
Prairie Rose Crabapple	Malus ioensis Prairie Rose
Royal Raindrops Crabapple	Malus JFS-KW5 Royal Raindrops
Redbud Crabapple	Malus zumi Calocarpa
Wildfire Blackgum (Sour gum)	Nyssa sylvatica Wildfire
Persian Ironwood	Parrotia persica Vanessa
Sargent Cherry or North Japanese Hill	Prunus Sargent
Regal Prince Oak	Quercus Regal Prince
Japanese Fragrant Snowbell	Styrax obassia
Ivory Silk Japanese Lilac	Syringa reticulata Ivory Silk
Signature Japanese Lilac	Syringa reticulata Signature
Greenspire Harvest Gold Linden	Tilia Greenspire Harvest Gold
Princeton American Elm	Ulmus americana Princeton
Emerald Sunshine Japanese Elm	Ulmus propinqua JFS-Bieberich Emerald Sunshine
Green Vase Japanese Zelkova	Zelkova serrata Green Vase

CITY OF AVON

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Richard R. Varga, Certified Arborist

APPENDIX B

**Prohibited Trees
(Undesirable for Street/Parkway)**

<u>Common Name</u>	<u>Botanical Name</u>
Boxelder	Acer negundo
Silver Maple	Acer saccharinum
Tree of Heaven	Ailanthus altissima
Russian Olive	Elaeagnus angustifolia
Modesto Ash	Fraxinus velutina glabra
Female Ginkgo	Ginkgo biloba (Female)
Thornless Honeylocust	Gleditsia tricanthos "Inermis"
Mulberry	Morus species
White Poplar	Populus alba
Cottonwood	Populus dectoides
Lombardy Poplar	Populus nigra
Bradford Pear	Pyrus calleryana "Bradford"
Willow	Salix species
American Elm	Ulmus americana
Siberian Elm	Ulmus pumila