

Chapter 8
Streets and Sidewalks

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History: Article I was Ordinance 4004 (adopted May 5, 1958), Article II was Ordinance 2015 (adopted October 28, 1992), Article III was Ordinance 2004 (adopted March 9, 1964), and Article IV was Ordinance 02-0128-02 (adopted February 25, 2002).

Article I Opening of Streets

Section 8-1 Permits and Fees

It shall be unlawful to open a street within the corporate limits of Delaware City for any purpose, including making sewer and water connections or doing maintenance, without first having obtained a permit from the person or persons assigned this authority by the “Mayor and Council of Delaware City”. It shall be a further condition that before a permit is granted there shall be deposited with the Treasurer of Delaware City either cash or a certified check in the amount of fifty dollars (\$50.00). It shall be the duty of the person, firm or corporation opening said street to close and restore the street within seven (7) days after it has been opened according to specifications by the “Mayor and Council of Delaware City”, unless an extension is granted in writing by person or persons so authorized to act by the “Mayor and Council of Delaware City” due to unusual conditions. It shall be the duty of person or persons authorized by the “Mayor and Council of Delaware City” to inspect the street after seven (7) days, and if the work is done to his or their satisfaction, in accordance with specifications outlined above to return the deposit. In the event, the street is not closed and restored, within seven (7) days there shall be an additional charge of five dollars (\$5.00) per day until said work has been done, which charge shall be deducted from the deposit. The amount of the deposit shall not limit this additional charge of five dollars (\$5.00) per day, except as agreed to by the “Mayor and Council of Delaware City” by a motion approved by that Body.

Section 8-2 Violations

Any person, firm or corporation violating the provisions of this Article shall be guilty of a misdemeanor and upon conviction before the Mayor or any Justice of the Peace, shall be fined a sum not exceeding fifty dollars (\$50.00) for each and every offense. The per diem additional charge of five dollars (\$5.00) per day beginning with the eighth day will represent additional offenses.

Sections 8-3 to 8-5 Reserved

Article II Maintenance and Obstruction of Sidewalks and Public Rights of Way/Entrance Permits

Section 8-6(a) Property Owner and Occupant Must Maintain Sidewalk and Abutting Public Right of Way.

All legal owners, agents of legal owners, tenants and occupants of properties abutting or fronting upon any street, alley or other public right of way within the corporate limits of the City of Delaware City are required to keep the public sidewalks, curbs, gutters, storm water drainage conveyances and other improved or unimproved portions of such public rights of way (excluding the paved portions of public streets and alleys) immediately abutting their property in a safe and clean condition, free of litter, debris, excessive vegetation and otherwise in good order and repair. Each such legal owner, agent, tenant and occupant shall be jointly and severally liable to the City of Delaware City for all losses and expenses, including legal expenses, to the City for recoveries from the City for damages to a person or property of others caused by his/her/its failure or that of his/her/its agents to repair and keep in good order and reasonably safe condition all such sidewalks abutting and fronting his/her/its property upon any street or alley within the corporate limits of the City of Delaware City. Notwithstanding the foregoing, the City of Delaware City shall be responsible for repair and replacement, but not the cleaning, of publicly owned curbs and gutters within the City limits.

(b) Property Owner and Occupants May Not Obstruct Right of Way. No person or entity shall be permitted to obstruct or erect improvements of any nature (including without limitation, fences, trees, plantings, paving and any other obstructions that may impair drainage or otherwise interfere with public use of the right of way) in, on, or about public sidewalks and improved or unimproved portions of public rights of way immediately abutting their property without the written approval of the City of Delaware City, which approval may be conditioned, withdrawn or denied at the discretion of the City Manager. Any person or entity aggrieved by a decision of the City Manager under this section may appeal such decision to the Board of Adjustment within twenty (20) days of the date of the City Manager's decision.

(c) Correction of Violations and Removal of Obstructions. After providing not less than fifteen (15) days, and not more than thirty (30) days, advance written notice of a violation of this Article to the owner and occupant of a property within the city limits of the City of Delaware City, and upon the failure of property owner or occupant to correct such violation within the time specified, the City Manager shall be authorized to take such steps as may be necessary for the correction of such violation with all costs and expenses, including legal expenses, to be assessed jointly and severally against the owner and occupant of such property. Such owner, tenant or

occupant shall complete all repairs or corrective actions within the time period specified in the written notice; provided, however, that upon good cause shown, the City Manager may grant an extension to such time period at his discretion not to exceed 120 days.¹

(d) Joint Liability. In the case of properties that are not owner occupied, any and all violation fines and all costs, expenses or fees assessed under this Article shall be the joint and several responsibility of the property owner and any tenant or occupant of the property in question at the time the violation notice was issued.

Section 8-7 Failure to Repay City for Repairs to Sidewalk or for Other Corrective Actions.

Thirty (30) days after the issuance of an invoice by the City, failure of the property owner, tenant, or occupant to repay the City for the cost, including legal expenses, of repairing sidewalks or correcting other violations under this Article, shall result in the monthly accrual of interest at an annual rate of one and one half percent (1 ½ %) until paid. Unpaid balances shall constitute a lien on the property in question.

Section 8-8 (a) Entrance Permits into Public Rights of Way. No person or entity shall make any entrance or curb cut or take any other action to construct or create an entry or exit way between private property and any publicly dedicated street or right of way located in the City of Delaware City for purposes of permitting vehicular traffic to and from the publicly dedicated streets or rights of way of the City without first applying to the City Manager for an entrance permit and paying a permit fee in such amount as may be determined from time to time by the City Manager. Any such application for an entrance permit shall be made in writing and shall provide such details and plans as may be necessary in the opinion of the City Manager to evaluate the safety and suitability of such proposed entrance application giving due regard to existing traffic patterns, the distance between the proposed entrance and existing driveways and intersections in the vicinity, and known, pending or proposed public and private construction projects that will affect the area and the proposed entrance. The City Manager shall render a written decision on any completed entrance application within twenty (20) days after submission of all portions of such application.

(b) Administrative Appeal. Any person or entity aggrieved by the decision of the City Manager in connection with any entrance application shall have the right to appeal such administrative decision to the Board of Adjustment pursuant to the provisions of 46-121(a) of this Code within twenty (20) days of the date of the City Manager's decision.

¹ Section 8-6 (c) & Section 8-7 Amended by Ordinance 05-1121-01 (Adopted 1-23-06)

Section 8-9 Fine and Enforcement. Every person or entity failing, neglecting or refusing to perform any duty required by this Article II of Chapter 8 of the Code of the City of Delaware City, or otherwise violating any provision thereof, shall be guilty of a violation punishable by a fine of \$100.00 per day for each day that such violation continues. In addition, such person or entity shall further be liable to the City for the cost of returning the curbs, streets and rights of way to their original condition. Such violations shall be enforceable in any Justice of the Peace Court. Alternatively, the City may institute legal or equitable action in any court of competent jurisdiction to collect fines or other amounts due and owing under this Chapter and to enforce administrative decisions hereunder, including actions for specific performance or injunctive relief. In any such legal or equitable action, the City shall be entitled to sue for and collect as part of the judgment any and all damages incurred in connection with a person's or entity's violation of this Chapter as well as court costs, the City's reasonable attorney's fees and any other out of pocket expenditures incurred by the City in connection with the enforcement of this Chapter.²

² Article II of Chapter 8 amended by Ordinance 05-0321-01 (adopted April 11, 2005)

Article III Snow and Ice on Sidewalks**Section 8-10 Snow and Ice Removal**

In case any snow or ice shall exist or be formed on the sidewalk of any public street in Delaware City, it shall be the duty of the occupant, lessee, owner or agent of the property which fronts or abuts upon any such public street to remove, or cause to be removed, all such snow and ice from that one-half of the sidewalk of said property nearest the building line. Said removal of such snow and ice shall be made within twenty-four (24) hours after such snow may cease to fall or after the formation of such ice.

Section 8-11 Depositing of Snow and Ice

In removing such snow and ice, it shall be unlawful to deposit any part thereof in the gutters or on the roadway forming a part of such public street. Such snow and ice shall be deposited on the sidewalk at or near the curb.

Section 8-12 Fine for Failing, Neglecting or Refusing to Perform Duty

Every person, firm or corporation failing, neglecting or refusing to perform any duty required by the foregoing sections hereof or continuing the violation on any day or days succeeding the first conviction hereunder shall be guilty of committing and maintaining a nuisance, and shall upon conviction thereof before the Mayor or any Justice of the Peace, be punished by a fine of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) besides costs of prosecution.

Sections 8-13 to 8-15 Reserved

Article IV Street and Park Trees

Section 8-16 Purpose

To establish authority, policies, regulations, and standards necessary to ensure that the City will continue to realize the benefits provided by its urban forest. The provisions of this Article are enacted to:

- a. Establish responsibility/authority for the management of the City's urban forest.
- b. Establish and maintain the maximum amount of tree cover on public lands in the City.
- c. Maintain City trees in a healthy and non-hazardous condition through good arboricultural practices.
- d. Establish and maintain diversity in tree species and age classes to provide a stable and sustainable urban forest.

Section 8-17 Definitions

As used in this Article, the following terms shall have the meanings indicated:

- a. ANSI A300: American National Standards Institute, Inc. Standard Practices for *Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance*.
- b. Commission: Delaware City Tree Commission.
- c. dbh: diameter of the tree trunk at a height of 4.5' from the ground.
- d. ISA: International Society of Arboriculture.
- e. Park trees: trees and shrubs in public parks, open spaces and all areas except rights-of-way owned by the city or to which the public has free access.
- f. Shall: a mandatory term.
- g. Street trees: trees and shrubs on public land lying within the rights-of-way of all streets, avenues or alleys within city limits.
- h. "Topping"/"Pollarding": the severe internodal cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Section 8-18 Commission; Membership

The Delaware City Tree Commission is the designated "Tree Authority" for the City of Delaware City. The Commission shall consist of the City Manager or designee and not more than six (6) members, a majority of whom shall be residents of the city, appointed by the Mayor with the approval of City Council.

Section 8-19 Terms of Office

The term of office shall be three (3) years, except, on the initial appointment, three (3) members shall be appointed for three (3) years, three (3) for two (2) years, and two (2) for one (1) year. Appointments shall be made by the Mayor during the month of May on a yearly basis. Vacancies occurring otherwise than by expiration of term shall be filled by appointment by the Mayor and approved by City Council for the unexpired term.

Section 8-20 Compensation

Members of the Delaware City Tree Commission shall serve without compensation.

Section 8-21 Meetings

The Delaware City Tree Commission shall have public meetings at least semi-annually. The Commission shall deliver the agenda for each meeting to the City office two weeks prior to the meeting date. The City office shall post the agenda ten (10) working days prior to the meeting.

Section 8-22 Quorum

Any action taken by the Commission at a regularly scheduled meeting shall require a majority vote of members in attendance. Attendance by three (3) or more members shall constitute a quorum for the conduct of business by the Commission. Should nature create a hazard that needs immediate attention to protect the public's safety, the City Manager shall use his/her discretion to rectify the problem in a timely manner within the bounds of this Article.

Section 8-23 Duties and Responsibilities of Commission

The duties and responsibilities of the Commission shall include the following as well as additional responsibilities mandated by action of City Council:

- a. To complete a street/park tree inventory and review and update the information contained therein on at least an annual basis.
- b. To develop and maintain a street/park tree master plan for the City of Delaware City that shall contain a recommended tree species planting list and a planting plan which shall govern the species and sizes of trees which can be planted in given locations.
- c. To study, investigate, develop and/or update, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented to the City Council and, upon

their acceptance and approval, shall constitute the official comprehensive tree plan for the City of Delaware City. The Commission, when requested by City Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

d. To prepare and submit a tree planting/maintenance budget to Council for approval.

e. To advise the City Manager on making application for and receiving grants or contributions of money, technical assistance and labor from any person, organization or agency, and, on the expenditure of such grants or contributions for specific projects relating to the planning, management, care, planting and preservation of trees in the community forest and for the beautification of Delaware City.

f. To assist and work with individuals/businesses developing new residential, commercial or industrial sites to preserve existing trees or oversee proper replacement of trees removed from the site being developed.

g. To advise the City Manager with regard to specifying work for which bid submissions from qualified contractors will be requested and with regard to arrangements for the proper care, planting or preservation of trees after work is completed.

h. To educate the public about the benefits of trees and their proper care.

Section 8-24 Operation of Commission

The Mayor shall designate the Chair of the Commission. The Commission shall choose all other officers, make its own rules and regulations, keep a journal of its proceedings, and appoint a liaison from the membership to work with the public. When a greater level of expertise is needed, the Commission shall request assistance from the Delaware Department of Agriculture Forestry Service Urban and Community Forestry Coordinator.

Section 8-25 Species to be Planted

The Commission shall have the authority to determine the appropriateness of trees planted on public grounds within the City of Delaware City. No individual member of the community is allowed to plant a park or street tree on city property without first receiving written permission from the City. The tree master plan and recommended species list shall be the guideline followed.

Section 8-26 Spacing of Trees

a. Except in special plantings designed or approved by a landscape architect and the Delaware City Tree Commission, the spacing of street trees will be in accordance with three (3) species size classes:

Small – Plant no closer than thirty (30) feet apart.

Medium – Plant no closer than forty (40) feet apart.

Large – Plant no closer than fifty (50) feet apart.

b. No street tree shall be planted closer than thirty (30) feet from a street corner, measured from the point of the nearest intersecting curbs or curblines, where it could block the view of traffic and signs.

c. No street tree shall be planted closer than ten (10) feet from any fireplug.

Section 8-27 Distance from Curbs and Sidewalks

All trees will be planted in the center of the area between the curb or curblines and sidewalks at the approval of the Delaware City Tree Commission.

Section 8-28 Utilities

No street trees other than those classified as “small” trees shall be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground waterline, sewer line, transmission line or other utility.

Section 8-29 Tree Size

All street trees planted on city-owned land shall conform to American Association of Nurserymen Standards and be at least one and one-fourth (1-1/4) to one and one-half (1-1/2) inches in diameter at breast height (dbh) and at least eight (8) to ten (10) feet tall when planted unless special conditions exist and the Commission approves a deviation.

Section 8-30 Planting

Delaware Department of Agriculture Forest Service Urban and Community Forestry recommended planting techniques for the type of tree to be planted (balled and burlap (b & b), containerized, bare root) shall be followed. Such specifications are to be given to contractors each time a contract for tree planting is awarded.

Section 8-31 Maintenance

a. The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, parks and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such grounds. It shall be the responsibility of the City, with the guidance of the Delaware City Tree Commission, to provide adequate maintenance for all city park and street trees.

b. The City may remove, or order the removal of any tree or part thereof which is in a hazardous condition or which by reason of its nature is injurious to sewer and electric power lines, gas lines, waterlines or other public improvements or is infected with disease or infested with pests.

c. No person shall plant, spray, prune, remove, cut above or below ground or otherwise disturb any trees on any street or city owned property without first receiving permission from the City. Any City-owned tree removed by a property owner must be replaced at the property owner's expense unless prior approval for the removal was received from the City.

d. Any City tree pruned by a property owner (or hired contractor) using pruning practices other than those defined in ANSI A300 that subsequently succumbs to disease, rot or pest infestation as a result of improper pruning techniques having been used, shall be replaced at the property owner's expense.

e. Any individual or firm contracted by the City or a private property owner to provide pruning maintenance on City owned trees is required to follow ANSI A300 standard practices.

Section 8-32 Tree Topping/Pollarding

It shall be unlawful for any person, firm, city department or utility company to "top" (see Definitions) any street tree, park tree or other tree on public property. No city owned trees are to be exempted from this practice.

Section 8-33 Pruning of Overhanging Trees; Costs

Every property owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection. Trees shall also be pruned to provide a clear space above the surface of sidewalks and streets to allow for unobstructed passage of pedestrians and vehicles. Said owners shall remove all dead, diseased or hazardous trees, or broken or decayed limbs that constitute a hazard to the safety of the public.

Upon finding any the above conditions, the City shall cause the property owner to be notified of the problem(s) and encourage the property owner to correct the problem(s) in a timely manner. The property owner shall have sixty (60) days from the date of that notice to comply and have the tree(s)/shrubs(s) pruned. After that time period, the City and its contracted agent shall have the right to enter onto private property to prune any tree or shrub when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign or interferes with the safe passage of pedestrians and vehicles. The property owner shall assume the cost of the maintenance and such charges shall constitute a lien on the property until paid.

Section 8-34 Removal/Treatment of Dead, Diseased, Pest Infested or Otherwise Hazardous Trees; Costs

a. The City shall have the right to cause the removal of any dead trees on City owned or private property when such trees constitute a hazard to life or property in the public right-of-way.

b. The City shall have the right to notify private property owners to have diseased or pest infested trees on their property treated by an ISA certified arborist when said trees are in such close proximity to City trees so as to pose a threat to the health of City owned trees. Should the property owner not comply with such request within thirty (30) days, the City shall have the right to have such tree(s) treated or removed, if warranted, at the property owner's expense and such charges shall constitute a lien on the property until paid.

c. When the City plants a tree, all costs involved in removing the tree/stump, and repairing damage to sidewalks and curbs are the City's responsibility. When a private property owner has planted a tree on City property and it needs to be removed, the City will notify the property owner in writing, and removal and repair shall be done by the property owner at his/her expense within sixty (60) days after the date the notice is served. In the event the property owners fails to comply, the City or its agents shall have the authority to remove the tree and make repairs and charge the cost of removal and repairs to the property owner and such charges shall constitute a lien on the property until paid.

Section 8-35 Removal of stumps

All stumps of street and park trees shall be removed to at least six (6) inches below grade so that the top of the stump shall not project above the surface of the ground.

Section 8-36 Replacement/Mitigation Policy

A tree is to be planted and allowed to become established in close proximity to a declining tree, for a period of at least five (5) years prior to the removal of the declining tree. When such a replacement/establishment policy cannot be followed, due to time constraints, prior removal to the declining tree, any tree that is removed by the City shall be replaced by one or more trees of an appropriate species as noted in the table below. One of the required numbers of trees shall be planted in as close proximity to the one removed as is feasible and the remaining specified number shall be planted at other park or street sites. The replacement trees are to be planted within one (1) year from the date of removal.

<u>dbh of Tree Removed</u>	<u>Replacement Quantity</u>	<u>dbh of Replacement(s)</u>
less than 6"	1	1-3/4" minimum
6"-9"	1	1-3/4" minimum
9"-12"	2	1-3/4" minimum
greater than 12"	3	1-3/4" minimum

Section 8-37 New Developments; Street Renovation Projects

a. In new residential, commercial or industrial developments, the developer is responsible for new street tree plantings. The developer must purchase and plant street trees in the public right-of-way no smaller than 1-1/2" in caliper (dbh), which conform in species and spacing as, noted in this document and in the master plan. The City is responsible for making prospective developers aware of this requirement prior to the project design phase and for assisting the developer with placement, spacing and species selection.

b. City street renovation projects shall make provisions for street tree plantings where space is available. The Delaware City Tree Commission shall work with the contracted project engineer/landscape architect during the design and implementation phases of the project.

Section 8-38 Interference with City or Commission

It shall be unlawful for any person to prevent, delay or interfere with the City, the Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street tree, park tree or trees on city-owned or private property, as authorized in this Article.

Section 8-39 Abuse of Public Trees

Unless specifically authorized by the City, no person shall intentionally damage, cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters or other contrivance to any tree; allow gaseous, liquid or solid substances which are harmful to such trees to come in contact with the tree or root zones; or set fire to burn when such fire or heat thereof will injure any portion of any tree on City property.

Section 8-40 License Required for Business of Tree Pruning, Treating or Removal

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring a State of Delaware business license.

Section 8-41 Certification; Insurance

a. Any firm contracted by the City to prune or remove a city owned tree must show proof of ISA (International Society of Arboriculture) certification and must be familiar with and follow ANSI A300 standard pruning practices before a contract for the work can be awarded.

b. Any firm contracted by the City, or its agents, to spray for or otherwise treat pests and diseases must show proof that it is an ISA certified arborist and holds a current Delaware pest control operators license.

c. Firms contracted by the City or its agents must provide proof of Workman's Compensation Insurance and adequate Liability Insurance coverage for bodily damage and for property damage, indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as described herein to the City Manager.

Section 8-42 Review of Commissioners

The Mayor and City Council shall have the right to review the conduct, acts and decisions of the Delaware City Tree Commission. Any person may appeal any ruling or order of the City Manager or the Delaware City Tree Commission to the Mayor and Council who may hear the matter and make the final decision.

Section 8-43 Penalty

Any individual/business violating any provision of this Article shall be, upon conviction, or plea of guilty, subject to a fine not to exceed two hundred fifty dollars (\$250.00) per incident.

Sections 8-44 to 8-50 Reserved