

**ORDINANCE NO. 2018-10 (As Amended)**

**INTRODUCED BY: Mr. Stanard**

**AN ORDINANCE ENACTING NEW SECTION 521.15, "NUISANCES IN CONNECTION WITH TREES," OF THE GENERAL OFFENSES CODE AND AMENDING SECTION 1173.05 AND CHAPTER 1353, BOTH TITLED "CUTTING OF TREES" OF THE CODIFIED ORDINANCES OF THE VILLAGE OF MORELAND HILLS, OHIO.**

**WHEREAS**, due to the prevalence of the ash borer, the oak moth and other insects and diseases that kill ash trees, oaks trees, and other species of trees in the Village, there are many trees on private properties that are diseased or dead and must be removed for the safety of the inhabitants of the Village, yet property owners are not taking necessary steps to cut down diseased or dead trees; and

**WHEREAS**, the Village's Codified Ordinances do not currently provide an enforcement mechanism for the Village to require that diseased or dead trees be removed; and

**WHEREAS**, the Mayor and Service Director have recommended that the Village's Codified Ordinances be amended to provide an enforcement mechanism for the Village to require that diseased or dead trees be removed if their condition constitutes a nuisance; and

**WHEREAS**, the Building Commissioner has also recommended that Section 1173.05 and Chapter 1353, both titled, "Cutting of Trees", be amended to reduce the trunk diameter of the maximum of four (4) trees that can be removed without a permit from twenty-four (24) inches diameter at breast height to eight (8) inches diameter at breast height; and

**WHEREAS**, the Planning Commission, after holding a public hearing as required by Section 1133.09 has recommended that Council enact new Section 521.15 and amend Section 1173.05 and Chapter 1353 of the Codified Ordinances of the Village of Moreland Hills to reduce the trunk diameter of the maximum of four (4) trees that can be removed without a permit from twenty-four (24) inches diameter at breast height to eight (8) inches diameter at breast height; and

**WHEREAS**, this Council, after holding a public hearing as required by Section 1133.17, desires to enact new Section 521.15 and amend Section 1173.05 and Chapter 1353 of the Codified Ordinances of the Village of Moreland Hills as set forth herein and finds such amendments to be in the best interest of the Village and in furtherance of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MORELAND HILLS, COUNTY OF CUYAHOGA, STATE OF OHIO, THAT:**

**Section 1.** New Section 521.15, "Nuisances in Connection with Trees," of the General Offenses Code of the Codified Ordinances of the Village of Moreland Hills shall read in its entirety as follows:

**“521.15 NUISANCES IN CONNECTION WITH TREES.**

(a) The following acts, things and conditions done or existing within the Village are hereby declared to be nuisances:

- (1) Any tree upon any street or public place or so near thereto as to permit the roots of the tree to penetrate through or under the surface thereof.
- (2) Any tree, plant or shrub, wherever located within the Village, infected with any parasite, insect, fungus or pest which may be communicated to any other tree, plant or shrub.
- (3) Any tree which has fallen, or is in such condition that it is likely to fall, on any public or private property, including the property upon which it is situated. It shall not constitute a nuisance under this subsection (a)(3) if the Building Inspector finds that:
  - i. the tree is located in a wooded area;
  - ii. the wooded area is not improved with structures (i.e., patios, fences) or landscaped areas as those terms are defined in Section 1123.03 of this Code; and
  - iii. the wooded area is kept in its natural state.
- (4) Any tree, plant or shrub whose branches or trunk obstruct or impede traffic on any street or public place. Branches overhanging any public sidewalk, pavement or roadway within nine feet of the surface thereof shall be deemed prima facie to obstruct or impede traffic thereon.

(b) No person shall maintain any of the nuisances described in subsection (a) hereof.

(c) Whenever, in the opinion of the Building Inspector, any of the nuisances described in subsection (a) hereof exists, he or she shall cause its abatement and cause the cost of the abatement to be charged and collected in the manner provided herein.

(d) When a nuisance is located on or originates from real estate not owned by the Village, the Building Inspector, on finding that the nuisance exists, may cause written notice to be served on the owner of the real estate. The notice shall set forth the nature of the nuisance, the Building Inspector’s estimate of the cost of abating the same if done by the Village, a reasonable time determined by the Building Inspector, not to exceed thirty days, within which the owner may abate the nuisance, and a statement that unless the nuisance is abated within the stated time, it may be abated by the Village and the cost of abatement assessed on the real estate.

(e) The notice may be served by delivering it personally to the owner, by commercial carrier with signature required (i.e., FedEx) or certified mail, return receipt requested, or if it cannot be served by any of the foregoing ways, by publishing it once in a newspaper of general circulation in the Village.

(f) Tree(s) that are cut or removed from real estate not owned by the Village pursuant to a notice issued pursuant to this Section shall be cut to within twelve (12) inches of grade, or as close thereto as reasonably possible.

(g) If the nuisance is not abated within the required time, the Building Inspector shall cause its abatement and shall give notice to the owner by commercial carrier with signature required (i.e., FedEx) or certified mail, return receipt requested, at his/her tax mailing address of the cost incurred. If such cost is not paid within thirty (30) days after receipt of such notice, a collection fee of seventy dollars (\$70.00) will be added to the cost thereto, and such amount shall be certified by the Village Treasurer to the County Auditor for collection in the same manner as other taxes and assessments are collected.

(h) When the cause or source of a nuisance exists on property owned by the Village, the Building Inspector shall, and in any other case he or she may, abate the nuisance at the expense of the Village and no notice shall be required preliminary to the abatement.

(i) Whoever violates this section is guilty of a misdemeanor of the fourth degree for a first offense and a misdemeanor of the third degree for subsequent offenses. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. The penalty shall be as provided in Section 501.99.”

**Section 2.** Existing subsections (a), (d), (f) and (i) of Section 1173.05, “Regulations for the Cutting of Trees,” of the Codified Ordinances of the Village of Moreland Hills, Ohio, be and the same hereby is amended to read as follows:

**“1173.05 REGULATIONS FOR THE CUTTING OF TREES.**

(a) **Timbering or Commercial Cutting Defined.** As used in this Section, “timbering or commercial cutting” means the cutting or removal of ~~four (4)~~ five (5) trees or more having a trunk diameter of ~~twenty-four (24)~~ eight (8) inches or more DBH (diameter at breast height).

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(d) **Selective Cutting.**

(1) **Timber Stand Improvement (TSI)** is defined as improving the quality of a forest stand by removing or deadening undesirable species to achieve desired stocking and species composition. TSI practices including applying herbicides, burning, girdling, or cutting.

(2) **Selective Cutting** is defined as the partial cutting of a timbered area, removing the over mature and partially defective trees. The cutting is so designed to result in a uniform forest canopy, which will permit optimum growth and maintain natural conditions following cutting.

(3) **Selective or Timber Stand Improvement** shall be permitted under the following conditions, upon application to the Building Inspector.

A. The Building Inspector, ~~an arborist selected by the Village~~ and the owner or his or her representative shall together inspect the wooded area to be selectively cut, to butt brand and ribbon the specific tree to be cut. A comprehensive list of all trees listing size by DBH (diameter at breast height), species and condition shall be provided to the Building Inspector before initiation of the project. If the Building Inspector and the owner or his or her representative are unable to come to an agreement regarding the specific tree(s) to be cut, the Building Inspector may hire an arborist, at the Village’s expense, to determine the specific tree(s) to be cut.

B. Only trees so branded and marked shall be cut. Each unauthorized cutting of an unmarked tree shall constitute a separate violation of this Section and shall constitute grounds for the immediate revocation of the permit.

C. The maximum of four (4) trees shall be permitted to be cut with a trunk diameter of ~~twenty-four (24)~~ eight (8) inches or more DBH (diameter at breast height). All reasonable care must be taken to

prevent damage to trees that remain, so that the wooded area may return to its original condition in a reasonable amount of time.

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(f) Conditions of Zoning Certificate; Performance Guarantee. The conditions under which Zoning Certificates shall be issued under this Section are as follows:

- (1) A review of the impacts to erosion, stream sedimentation, storm water runoff, streams and wetlands ~~by the Chagrin River Watershed Partners, Inc. or other such technical experts as necessary and submittal of their report to the Building Inspector.~~
- (2) A Zoning Certificate for the cutting of trees shall not be issued by the Building Inspector in any case where such cutting of trees would result in interference with the natural water supply of the Village or any of the lots or lands therein, or if it would result in the undue erosion of the soil on such lots or lands.
- (3) A Zoning Certificate for the cutting of trees shall ~~not be issued by the Building Inspector unless and until adequate assurance is furnished by the applicant that if such permit is granted and such cutting of trees is done,~~ require that each tree shall be cut to within twelve inches of grade, or as close thereto as reasonably possible, and all of the cordwood branches, brush, rubble and refuse resulting therefrom will be removed from the premises or cut up, chipped and placed on the forest floor in such a way that no fire hazard shall result therefrom. A follow-up inspection by the Building Inspector shall be completed to assure the Village of such compliance.

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(i) Violations. The list of offenses that could result in violations of this Section shall include, but not be limited to:

- (1) Removal or destruction of a tree without a zoning certificate, but not including the removal or destruction of the up to four (4) trees permitted without a zoning certificate under this Section;
- (2) Removal of more trees than listed on a zoning certificate;
- (3) Commencing tree cutting without a zoning certificate;
- (4) Failure to adequately protect trees during operation; and
- (5) Improper clean-up operations, as defined in Section 1173.05(f)(3) and (h)."

**Section 3.** Existing subsections (a), (d), (f) and (i) of Section 1173.05, "Regulations for the Cutting of Trees," of the Codified Ordinances of the Village of Moreland Hills, be and the same are hereby repealed.

**Section 4.** Existing Sections 1353.01, 1353.04, 1353.06, and 1353.99 of Chapter 1353, "Cutting of Trees," of the Codified Ordinances of the Village of Moreland Hills, Ohio, be and the same hereby are amended to read as follows:

**"CHAPTER 1353  
Cutting of Trees**

**1353.01 TIMBERING OR COMMERCIAL CUTTING DEFINED.**

As used in this chapter, “timbering or commercial cutting” means the cutting or removal of ~~four~~ five trees or more having a trunk diameter of ~~twenty-four~~ eight (8) inches or more DBH (diameter at breast height).

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**1353.04 SELECTIVE CUTTING.**

Timber Stand Improvement is defined as improving the quality of a forest stand by removing or deadening undesirable species to achieve desired stocking and species composition. TSI practices including applying herbicides, burning, girdling, or cutting.

Selective Cutting is defined as the partial cutting of a timbered area, removing the over mature and partially defective trees. The cutting is so designed to result in a uniform forest canopy, which will permit optimum growth and maintain natural conditions following cutting.

Selective or Timber Stand Improvement (T.S.I.) shall be permitted under the following conditions, upon application to the Building Inspector.

- (a) The Building Inspector or his or her deputy, ~~an arborist selected by the Village and the owner or his or her representative shall together inspect the wooded area to be selectively cut, to butt brand and ribbon the specific tree to be cut. A comprehensive list of all trees listing size by DBH, species and condition shall be provided to the Building Inspector before initiation of the project. If the Building Inspector and the owner or his or her representative are unable to come to an agreement regarding the specific tree(s) to be cut, the Building Inspector may hire an arborist, at the Village’s expense, to determine the specific tree(s) to be cut.~~
- (b) Only trees so branded and marked shall be cut. Each unauthorized cutting of an unmarked tree shall constitute a separate violation of this Section and shall constitute grounds for the immediate revocation of the permit.
- (c) The maximum of four (4) trees shall be permitted to be cut with a trunk diameter of ~~twenty-four (24)~~ eight (8) inches or more DBH (diameter at breast height). All reasonable care must be taken to prevent damage to trees that remain, so that the wooded area may return to its original condition in a reasonable amount of time.

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**1353.06 CONDITIONS OF PERMIT; BOND.**

The conditions under which Zoning Certificates shall be issued under this Section are as follows:

(a) A review of the impacts to erosion, stream sedimentation, storm water runoff, streams and wetlands ~~by the Cuyahoga Soil and Water Conservation District and submittal of their report to the Building Inspector.~~

(b) A permit for the cutting of trees shall not be issued by the Building Inspector in any case where such cutting of trees would result in interference with the natural water supply of the Village or any of the lots or lands therein, or if it would result in the undue erosion of the soil on such lots or lands.

(c) ~~A permit for the cutting of trees shall not be issued by the Building Inspector unless and until adequate assurance is furnished by the applicant that if such permit is granted and such cutting of trees is done, all of the cordwood branches, brush, rubble and refuse resulting therefrom will be removed from the premises or cut up, chipped and placed on the forest floor in such a way~~

~~that no fire hazard shall result therefrom. A follow up inspection by the Building Inspector shall be completed to assure the Village of such compliance.~~

~~(c d) A permit for the cutting of trees shall not be issued by the Building Inspector unless and until adequate assurance is furnished by the applicant that if such permit is granted and such cutting of trees is done, require that each tree shall be cut to within twelve inches of grade, or as close thereto as reasonably possible, and all of the cordwood branches, brush, rubble and refuse resulting therefrom will be removed from the premises or cut up, chipped and placed on the forest floor in such a way that no fire hazard shall result therefrom. A follow-up inspection by the Building Inspector shall be completed to assure the Village of such compliance.~~

(d e) The bond hereinabove provided for shall be signed by the owner of the premises concerned and by each of the persons with whom arrangements have been made for the commercial cutting of the trees under contract or otherwise as principals, and by such sureties as the Building Inspector shall deem sufficient. Any permit granted shall be valid for a period of 90 days.

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### **1353.99 PENALTY.**

Whoever violates or fails to comply with any provision of this chapter shall be deemed guilty of a misdemeanor of the first degree and fined an amount not exceeding \$1,000.00. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues after the offender has been notified, by the Building Inspector or his or her deputies of such violation or noncompliance. The list of offenses that could result in fines shall include, but not be limited to:

- (a) Removal or destruction of a tree without a permit, but not including the removal or destruction of the up to four (4) trees permitted without a permit under this Chapter;
- (b) Removal of more trees than listed on a zoning certificate;
- (c) Commencing tree cutting without a zoning certificate;
- (d) Failure to adequately protect trees during operation; and
- (e) Improper clean-up operations, as defined in Section 1353.06(c) and Section 1353.08.”

**Section 5.** Existing Sections 1353.01, 1353.04, 1353.06, and 1353.99 of Chapter 1353, “Cutting of Trees,” of the Codified Ordinances of the Village of Moreland Hills, be and the same are hereby repealed.

**Section 6.** The actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings held in compliance with all legal requirements.

**WHEREFORE,** this Ordinance shall be in full force and effect from and after the earliest time allowed by law.

Placed on First Reading and Referred to Planning Commission February 14, 2018.

Planning Commission made recommendations to Council March 5, 2018.

Placed on Second Reading March 14, 2018.

Placed on Second Reading April 11, 2018.

Placed on Third Reading and Passed as amended May 9, 2018.

PASSED: May 9, 2018

Susan O'Leary, Mayor  
Mayor

ATTEST:  
Sam Scutta  
CLERK