

## **SECTION 19. Tree Preservation** *Amended, 24-25-07, 2023-24-3*

### **A. Purpose**

The purpose of this ordinance is to limit the number of beneficial trees to be removed for construction activities and to replace removed trees with equivalent or superior species to preserve the tree canopy in the Village and provide other benefits.

The preservation of the tree canopy and the planting of replacement trees will enhance the quality of life and the environment of the Village; reduce energy consumption; protect air quality; provide protection from glare and heat; baffle noise; reduce topsoil erosion and storm water runoff; preserve and enhance habitat for wildlife; protect and increase property values; combat climate change through carbon sequestration; provide natural privacy for neighbors; enhance the overall appearance of the Village; acknowledge the intrinsic value of the mature trees within our community; and conserve and enhance the Village's unique character and physical, historical and aesthetic environment, especially its natural and rural atmosphere that fosters the preservation and maintenance of the community identity.

### **B. Definitions**

Construction activity: The following listed activities if the conduct of such activity results in the anticipated removal of any Protected Tree on a Subject Lot, or if any such activity will take place within the drip line of any Protected Tree on the Subject Lot or adjacent property.

- a. The erection, exterior alteration, exterior repair, exterior renovation, demolition, or removal of a building or structure of any kind; or
- b. The paving, resurfacing, or installation of any impervious surface including, without limitation, roadways, driveways, patios and decks; or
- c. The excavation, filling, grading or clearing of all or any portion of a Subject Lot; or
- d. Any other activity that requires a building permit under any Village ordinance.

Construction activity area: The area of a Subject Lot that is the smallest area reasonably needed to completely contain and undertake the proposed Construction Activity as well as the area for access to such area within the Subject Lot.

Dense woods or densely wooded: Tree cover in an area of 10,000 square feet or more, in which the tree crowns are interlocking and canopy coverage is between 60 percent and 100 percent.

DBH: Also known as Diameter at Breast Height, the diameter of the trunk of the tree measured in inches at a point four and one-half feet above grade.

Drip line: A line drawn on the ground surface directly beneath and perpendicular to the maximum radius of the crown of an existing tree but not less than six feet from the trunk, whichever is greater.

**Prohibited Tree:** Any tree of any size included in Appendix B of this Section shall be a prohibited tree and shall not be planted in the Village.

**Protected Tree:** Any tree over 6" DBH, or a group of two or more trees over 12" DBH. Any tree of any size included in Appendix A. Any tree of any species designated on a Tree Preservation Plan to be retained during Construction Activity shall become a protected tree during Construction Activity. Any heritage, historical or landmark tree, witness tree, or other tree of any species with historical or regional significance excepting trees listed in Appendix B.

**Remove or removal:** The causing or accomplishing of the actual physical removal of 50% or more of the trunk of a protected tree measured from the surface, or the effective removal through damaging, poisoning, or other direct or indirect action resulting in, or likely resulting in, the death of a tree.

**Replacement tree:** A nursery-grown certified tree, properly balled and burlapped.

**Subject Lot:** A parcel of land, whether or not it is platted as part of a subdivision, on which construction activity is contemplated to take place.

**Tree:** Any self-supporting, woody plant together with its root system, growing upon the earth usually with one trunk, or a multi-stemmed trunk system, supporting a definitely formed crown.

**Tree Preservation Plan:** A written document indicating the methods which are to be used to preserve one or more Protected Trees and surrounding trees during Construction Activity and shall include a Tree Survey. The Tree Preservation Plan shall specify, incorporate and utilize Tree Preservation Techniques set forth in Appendix C attached hereto.

**Tree Preservation Techniques:** Measure taken to avoid damage to a Protected Tree or Trees, as the case may be, during and immediately after the Construction Activity as listed on Appendix C.

**Tree Removal Application:** An application meeting each of the criteria set forth in Section D.

**Tree Removal Permit:** A permit issued by the Village enabling the owner of a Subject Lot to remove one or more Protected Trees on such Subject Lot.

**Tree Survey:** A written document identifying all trees on a Subject Lot and within 15 feet of an adjacent property by species and DBH and indicating whether they are to be retained or removed and replaced, including trees that have been removed in the past year.

### **C. Applicability**

The terms and provisions of this Section shall apply to:

1. Any construction activity on a Subject Lot, with or without a building permit, whether it may have thereon a home or business, whether of a residential or commercial nature, or encompassing a residential or commercial use within another zoning district, including construction activity in the Estate, Agricultural, Special Limited Retail, and Special

Limited Cannabis zoning district where a Protected Tree is or Protected Trees are present on the Subject Lot and/or within 15 feet of adjacent property.

2. Zoning, rezoning or zoning text amendments, special use or variances where a Protected Tree or Protected Trees are present on the Subject Lot or within 15 feet on adjacent property.
3. Removal of any individual Protected Tree or Protected Trees for landscaping on a Subject Lot.
4. Exception: Any construction activity involving the subdivision of land a final plat of subdivision under the Village's Subdivision Ordinance; any final plat of planned development under Zoning Code Sections 6.4 Residential Planned Development, 6.5 Retail Planned Development, 6.6 Inclusionary Housing, 6A Telecommunications, 6.8 Solar Development; or any future zoning district created that involves the subdivision and/or development of multiple lots, shall be governed by Municipal Code Chapter 12, Subdivisions Section K, Tree Preservation.

**D. Removal and Replacement**

1. Permit Required: No person shall remove any tree to which this Section is applicable without first obtaining a Tree Removal Permit.
2. All building permits and petitions for zoning, rezoning, text amendments, special use or variances that include or contemplate construction activity as defined in this ordinance shall be accompanied by a Tree Removal Application.
3. Exceptions to the Tree Removal Permit Requirement: A tree removal permit is not required for removal of undesirable prohibited species of trees as listed in Appendix B; removal of invasive species; removal of trees down or severely damaged after tornadoes, windstorms or other natural disasters; removal of trees which have become, or immediately threaten to become a hazard to persons, property or removal of a diseased, dead or dying tree; management of active orchards and state or government approved tree farms in relation to trees planted and growing for sale to the general public; removal and/or replacement of trees pursuant to a forest management plan approved by the Illinois Department of Natural Resources (Illinois Forestry Development Act, 525 ILCS 15/1 et. seq.); or the clearing of a Subject Lot for purposes of ecological restoration pursuant to a plan directed by a certified Land Trust; the removal of any tree that is located on Village owned property or within any public right of way.
4. Application for a Tree Removal Permit:
  - a. An application for a tree removal permit shall be made in writing, explaining the need for removal of the Protected Tree or Trees, as the case may be, including a depiction of all trees on the subject lot and 15-feet beyond the boundary line on adjacent property in relation to the proposed construction activity which will result in the removal of the Protected Tree or Trees. The depiction shall include the location, species, and DBH of

each tree on the subject lot, indicate which Protected Trees are to be removed and any Protected Trees that have been removed in the past year on the subject lot.

- b. If removal of one or more Protected Trees on a Subject Lot is to accommodate Construction Activity on a Subject Lot, a Tree Preservation plan for the remaining Protected Trees on the Subject Lot during Construction Activity on the Subject Lot is required.
- c. If a Protected Tree is requested to be removed, the Tree Preservation Plan must show planting of new trees equal to the total replacement caliper of the removed Protected Trees. The Tree Preservation Plan shall indicate the planned location, species, and size of the proposed replacement trees to be planted. In order to qualify as replacements, trees must be planted on the same Subject Lot, and must conform to species and planting standards in this Section.
- d. There shall be no fee or charge for a Tree Removal Permit.

5. Standards for Replacement Trees:

- a. Replacement of Protected Trees: Any protected tree removed shall be replaced as follows:

<b>Diameter of Removed Tree*</b>	<b>Number of Replacement Trees</b>
4 inches	2 trees @ 2 inches
5-6 inches	3 trees @ 2 inches
7-8 inches	4 trees @ 2 inches or 3 trees @ 2½ inches
9-10 inches	5 trees @ 2 inches or 4 trees @ 2½ inches
11-12 inches	6 trees @ 2 inches or 5 trees @ 2½ inches
13 – 25 inches	Minimum 12 trees @ 2 inches or 10 trees @ 2½ inches
26 or more inches	Minimum 15 trees @ 2 inches or 12 trees @ 2½ inches
*Trunk size as measured at 48 inches above the established ground.	

- b. Replacement trees on a Subject Lot must be planted within 18 months from the date the Tree Removal Permit is issued, or prior to transfer of property ownership of the Subject Lot, whichever comes first. Time is of the essence.
- c. Consistent with good forestry and ecological practices, replacement trees shall be of either equivalent or a superior quality of species. For example, a softwood tree may be

- replaced with a hardwood tree, but an inferior species shall not be substituted for a superior species. In order to preserve and enhance the oak-hickory forest native to McHenry County, oak and hickory trees must be replaced in kind with native oak and hickory species, respectively. Where large numbers of trees other than oak and hickory are being replaced, a diversity of species shall be used so as to avoid creating a monoculture of one species.
- d. Replacement trees must be chosen from those set forth in Appendix A and provided with trunk protection and adequate water until established.
  - e. In the event that proposed replacement trees of the size and species that were described in the application for the Tree Removal Permit cannot be feasibly obtained at the time of planting, multiple smaller replacement trees equal to the combined DBH of the removed Protected Tree or Trees may be planted.
  - f. If a replacement tree dies within 18 months from the date of planting, it shall be replaced by the owner of the Subject Lot. Time is of the essence.

**E. Conditions of Approval**

- 1. The Village Zoning Enforcement Officer shall approve all requests for removal of Protected Trees if one or more of the following conditions are present and demonstrated to the Village with clear and convincing evidence:
  - a. The tree presents a safety hazard to pedestrians, vehicular traffic or buildings;
  - b. The tree is diseased or weakened by age, storm, fire or other injury;
  - c. Every reasonable effort has been made to retain the tree or trees through comparable alternative designs to the site plan and/or building footprint and/or integration into the Tree Preservation Plan;
  - d. The presence of the tree places an undue financial burden on the property owner.
- 2. The Village may agree to accept cash-in-lieu-of replacement trees in which case the determination of market value of the number of replacement trees required in Subsection D.2(a) shall determine the compensation required.
- 3. Densely Wooded Lots Exception
  - a. If, after consideration of subsection 1 above, and every reasonable alternative to removal has been considered, protected trees that exist in a densely wooded lot are so numerous as to preclude construction activity without removal of such protected trees, then the Village Forester, Village Arborist or Building Officer or if none, a Certified Arborist engaged by the Village, shall recommend the maximum number of replacement trees that will be required. In making this exception, the Forester, Arborist, or Building Officer shall take into consideration:

1. The character, diversity of species and number of protected trees remaining on the lot after removal of the protected trees.
  2. The overall effect on the character and appearance of the lot after removal of the protected trees.
  3. The environmental impact of removal of the protected trees.
  4. Whether the granting of this exception would be contrary to the general objective of this ordinance, and
  5. Whether granting this exception would be materially detrimental to the other property owners in the vicinity.
- b. The decision of the Village forester, arborist or building officer as to the number of replacement trees required shall be final unless the applicant appeals the determination to the Zoning Board of Appeals.
  - c. If the Village forester, arborist or building officer determines that fewer than 10 percent of the protected trees in the construction activity area must be replaced by replacement trees, that decision shall be reviewed by the Village Board of Trustees and shall be approved, rejected, modified or returned to the forester, arborist, or building officer for further analysis and recommendation.
  - d. In the case of a densely wooded lot, the cash-in-lieu-of value of the number of replacement trees shall be determined in a written report from a qualified Certified Arborist that verifies the condition of each individual tree and their estimated value utilizing the Guide for Plant Appraisal, 9th Edition.
4. If trees have been removed without a Tree Removal Permit up to one year prior to the application, the application will be denied.
  5. If approval is denied, the applicant may appeal the denial to the Village Zoning Board of Appeals for a determination of hardship.

**F. Violations and Enforcement:**

1. If a Protected Tree is removed without a Tree Removal Permit, a stop work order will be issued for the Subject Lot and remain in effect until a Tree Removal Permit application is filed. Each business day until an application for a Tree Removal Permit is filed shall constitute a separate violation of this ordinance. Filing a Tree Removal Permit application will stay further penalties during pendency of the application review.
2. In addition to meeting the tree replacement provisions herein, any person or entity who violates any provision of this Section, upon being found guilty, shall be subject to the following fines:
  - a. Removal of a Protected Tree without a Tree Removal Permit: a minimum fine of \$150.00 and a maximum fine of \$750.00 per day for each such tree.

- b. Failure to replace any damaged or destroyed Protected Tree: a minimum fine of \$150.00 and a maximum fine of \$750.00 per day for each such tree.
  - c. Failure to comply with a required Tree Protection Plan: a minimum of \$150.00 and maximum of \$750.00 per day in addition to any penalty for damage or destruction in b. above.
- 3. Repeated violations or failure to make payment of any fine may result in the revocation, suspension, or denial of any local license or permit, including renewals and transfers, and/or a municipal lien being placed on the violator's Subject Lot located within the Village. This Section shall in no way abrogate or impair the right of the Village to specifically enforce, by any local means, any of the provisions of this Chapter. Each day that a violation continues shall be considered a separate offense.
- 4. Injunctive relief: Whenever there exists reasonable cause to believe that a person is violating any applicable provision of this article, the Village may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the relevant subject lot owner to correct the unlawful condition or to cease the unlawful use of the subject lot.

## Appendix A: Protected Species

<b>Desirable Native Tree Species</b>	
<i>Acer nigrum</i>	Black Maple
<i>Acer saccharum</i>	Sugar Maple
<i>Aesculus glabra</i>	Ohio Buckeye
<i>Carpinus caroliniana</i>	American Hornbeam
<i>Carya cordiformis</i>	Bitternut Hickory
<i>Carya ovata</i>	Shagbark Hickory
<i>Celtis occidentalis</i>	Hackberry
<i>Fraxinus americana</i>	White Ash
<i>Ostrya virginiana</i>	American Hophornbeam
<i>Quercus alba</i>	White Oak
<i>Quercus coccinea</i>	Scarlet Oak
<i>Quercus ellipsoidalis</i>	Hill's Oak
<i>Quercus macrocarpa</i>	Bur Oak
<i>Quercus rubra</i>	Red Oak
<i>Quercus velutina</i>	Black Oak
<i>Tilia americana</i>	American Linden
<i>Quercus Muehlenbergii</i>	Chinkapin Oak
<i>All native species of oak and hickory trees</i>	
<b>Desirable Native Shrub Species</b>	
<i>Prunus Americana</i>	Wild Plum
<i>Corylus Americana</i>	Hazelnut
<i>Malus ioensis</i>	Prairie Crab
<i>Amelanchier arborea</i>	Serviceberry
<i>Viburnum dentatum</i>	Downy Arrowwood

Ash species present on the site are protected, however due to the current infection of ash trees with the Japanese Ash Borer, Ash trees may not be planted as replacement trees at this time.



## Appendix B: Prohibited Tree Species

<i>Acer negundo</i>	Box Elder
<i>Acer plantanoides</i>	Norway Maple
<i>Acer saccharinum</i>	Silver Maple
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Elaeagnus angustifolia</i>	Russian Olive
<i>Elaeagnus umbellata</i>	Autumn Olive
<i>Gleditsia triacanthos</i>	Honey Locust
<i>Juniperus virginiana</i>	Red Cedar
<i>Populus species</i>	Poplar species
<i>Rhamnus cathartica</i>	Common buckthorn
<i>Rhamnus fragula</i>	Glossy buckthorn

<i>Pyrus Calleryana Bradford</i>	Bradford Pear
<i>Robina pseudoacacia</i>	Black locust
<i>Taxodium distichum</i>	Bald Cypress
<i>Ulmus Pumila</i>	Siberian Elm
<i>Morus Alba</i>	White mulberry
<i>Catalpa Speciosa</i>	Catalpa
<i>Fraxinus Species</i>	Ash Species
<i>Lonicera</i>	Honeysuckle
<i>Prunus Ser</i>	Black Cherry
<i>Thuja occidentalis</i>	Arbor vitae

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**Appendix C Tree Preservation Techniques**  
**(From Municipal Code Chapter 12, Section 12-K-6.)**

Tree Preservation Techniques: During development and construction activity, all reasonable steps shall be taken to prevent damage to or destruction of Protected Trees, woodlands and savannas. The Tree Preservation Plan shall specify and utilize the following preservation techniques:

- a. Soils shall not be removed, compacted or otherwise disturbed within the critical root zone.
- b. A protective fence approved by the Village shall be erected around the critical root zone of any Protected Tree or group of trees. Signage shall be affixed to the fence indicating the presence of the critical root zone and delineate the protected area.
- c. All trees on property adjacent to the Subject Lot and within 10 feet of the Subject Lot's property line, or that have a critical root zone extending into the subject site, shall be protected from unreasonable damage by the use of acceptable tree protection measures.
- d. Mass cuts and mass grading are discouraged to minimize disturbance of trees or stands of trees.
- e. Boring shall be used to install any underground utilities near the root zone of Protected Trees, where feasible.
- f. Each of the developer and owner of the Subject Lot shall ensure that all applicable subcontractors are trained in proper tree protection.
- g. No excess soil, additional fill, equipment, trailers, liquids or construction debris shall be placed within the identified critical root zone of any tree that is to remain at its original location.
- h. Only protective non-damaging devices or attachments shall be attached to any tree during construction.
- i. Crushed limestone or any other material which may be detrimental to trees shall not be dumped within the drip line of any tree(s) nor shall be located at any higher location where drainage toward the tree(s) would conceivably affect the health of said tree(s).
- j. Any trees whose roots may be negatively affected during the construction process shall be pruned by an arborist to compensate for root loss during construction.