



## Land Use Committee

**SUBJECT:** Report on Tree Preservation

**MEETING DATE:** February 8, 2022

**FROM:** Land Use Committee of the Village Board

**BUDGET IMPACT:** See Budget Impact Section

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### **Introduction**

The Land Use Committee of the Village Board, working with the Village Manager's Office and Village Foresters, has extensively reviewed the Village's tree preservation policies and has determined that the Village's current preservation policies are not adequate to protect the Village's existing tree canopy.

A series of recommended changes to the tree preservation policies will be presented at the February 8, 2022 Village Board meeting and are discussed in detail below. Following the presentation and discussion by the Village Board, an ordinance(s) is tentatively scheduled to be introduced at the February 22, 2022 Village Board meeting with adoption on March 8, 2022.

### **Background**

The Land Use Committee reviewed tree preservation and tree protection policies, both of which are discussed below. For reference, the term tree protection is focused on preventing damage to trees during construction whereas tree preservation is focused on preventing and/or limiting the removal of healthy trees.

### **Existing Preservation Regulations**

The Village's Tree Canopy Ordinance was implemented in 2007 following a review by the Land Use Committee. The Canopy Coverage Ordinance requires 35% of a property be covered by tree canopy when development occurs. Development is defined as the construction or demolition of a principal structure or qualifying additions which includes both a) increase the structure footprint (lot coverage) by 50% or more, and b) are removing a tree which is 10" or greater in diameter.

When the requirements are triggered, 35% of the property must be covered by the tree canopy:

- Trees from the property in question as well as from the public right-of-way and neighboring properties count toward the 35% canopy requirement; the health/condition of the trees are not taken into account when calculating existing canopy coverage.
- Existing Oak (24"+), Hickory (16"+), and American Elm (30"+) species are recognized for their value and such trees receive a bonus multiplier of 1.5x when calculating existing canopy coverage conditions.
- If the property is unable to meet the 35% canopy coverage requirements with existing trees, new trees must be planted onsite which are projected, at maturity, to provide 35% canopy coverage.

Because many single-family lots in the Village are 50' wide by 150' deep which equates to a total lot area of 7,500 square feet, 35% canopy coverage equates to 2,625 square feet. Given these calculations, properties which do not meet the minimum 35% coverage requirement can comply by planting one shade tree, no matter how many trees are removed from the property.

### Tree Preservation Goals

In its discussions, the LUC identified the following as goals of a tree preservation policy:

- Minimize the number of unnecessary removals when trees are removed;
- Ensure sufficient replacement trees are planted to maintain and/or grow the community's tree canopy over time;
- A policy which is:
  - simple and easy to understand;
  - enforceable;
  - reasonable for the property owner; and
  - focused on reforestation and not revenue generation

### Measuring the Existing Regulations Against Policy Goals

In considering whether the Village's existing tree canopy regulations meet the goals identified above, the LUC reviewed tree removal data from 2019 construction projects and solicited feedback from residents and the development community. Based on the following analysis and data, the LUC determined that modifications to the canopy coverage ordinance are necessary. The Village has data for 26 residential construction projects in 2019 which triggered the canopy requirements:

- *64 trees 10" or greater in DBH were removed, totaling 1,306" DBH<sup>1</sup>*
  - *27 of the 64 trees removed (42%) were at least 20" in diameter and considered to be large, mature shade trees*
- *21 new trees were planted, totaling 42" DBH at time of planting*
- *14 of the 26 projects did not have to plant new trees because the property met the 35% canopy threshold*
  - *12 of the 14 projects were able to remove trees and still meet the 35% canopy threshold without having to plant new trees*
    - *The other 2 projects did not remove any trees and existing trees met the 35% canopy threshold thereby no new plantings were required*

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<sup>1</sup> "DBH" or "diameter at breast height" means the diameter of the trunk of the tree measured in inches at a point four and one-half (4 1/2) feet above the existing grade at the base of the tree.

In addition to the above quantitative analysis, the following qualitative analysis was reviewed:

Question	Answer	Explanation
Are unnecessary removals minimized?	No	This question is difficult to answer but compared to other preservation policies, there are no mechanisms to disincentivize, to limit, or to prevent certain removals and the policy is only applicable during development
Are tree replacements sufficient?	No	For 2019, of the 26 projects reviewed for canopy coverage, 43 more trees were removed than planted with a net a loss of 1,264" DBH; further, due to construction impacts newly planted trees struggle to reach maturity *Additional detail can be found above.
Is the policy simple and easy to understand?	No	The policy is complex due to the calculations required to determine existing coverage and projections on how new trees will mature
Is the policy enforceable?	Limited	While the Village Staff is able to adequately enforce the policy, the failure to account for the condition of trees that apply toward the 35% coverage minimum as well as the ability to remove those trees at any time limits the effectiveness of the enforcement
Is the policy considered reasonable?	Yes/No	Stakeholder sessions with developers indicated the policy was considered reasonable while feedback from residents who participated in the LUC's review indicated that the policy did not reasonably protect trees

Determining the Appropriate Policy

Once the LUC determined that the existing regulations were not sufficiently preserving the Village's tree canopy, the Committee discussed whether amendments to the Tree Canopy Ordinance could adequately improve the policy or if a completely new tree policy concept was needed.

To assist the Committee in this review, tree preservation policies from the following communities, with similar tree canopies, were reviewed:

- Glenview
- Kenilworth
- Lake Forest
- Winnetka
- Highland Park
- Northbrook
- Lincolnshire

In general, the tree preservation policies in these communities are similar to one another. Unlike the Village's existing tree canopy regulations, the above municipalities have what is commonly referred to as an "inch-for-inch" tree preservation policy. Under an inch-for-inch

policy, replacement trees, or fees in lieu of replacement trees, are required for the removal of healthy private property trees. Each of the above communities allow for the removal of trees that are dead/dying/diseased/hazardous without requiring any replacement trees or fees in lieu of replacement. Some ordinances allow the municipality to prohibit the removal of private property trees in certain circumstances, albeit such denials are rare (typically pertaining to the requested removal of large, healthy, desirable trees) and always include an appeal process which goes through a commission, zoning board and/or elected governing body.

This inch-for-inch policy approach meets the Chicago Region Trees Initiative's (<http://chicagorti.org/>) Gold Standard for tree preservation because it protects trees outside the development process (the Village's current policy does not meet this standard as it is only triggered by development). The Gold Standard is recommended for consideration in the Village's Sustainability Plan.

### **Discussion**

After reviewing tree preservation policies, the LUC determined that an inch-for-inch policy, similar to comparable communities, would best protect the Village's tree canopy. The following will discuss the most significant policy recommendations which include:

- Tree removal permits
- Tree protection
- Tree preservation which includes:
  - Additional protections for highly desirable trees, referred to as 'Heritage Trees'
  - Replacement requirements when a tree is removed
  - Fees in lieu of replacement requirements
- Penalties for non-compliance
- Zoning incentives
- Other miscellaneous changes

### **Tree Removal Permits**

The LUC recommends a tree removal permit for any tree which is 6" DBH or greater. This is a change from existing requirements which triggers a permit at 10" DBH. Other recommendations include:

- A tree removal permit fee of \$75 (current fee is \$29) which is aligned with the administrative costs to review and process the permit.
- The permit fee would be in addition to any replacement/fee in lieu requirements.
- The permit fee would be waived for trees which are dead, dying, hazardous, or considered an invasive species (consistent with current practice).
- Trees will be defined as having at least one trunk which is 6" DBH or greater.
  - The intent of this definition is to ensure that smaller multi-stem shrublike trees and certain ornamental trees are not considered protected as the LUC's primary goal is to preserve medium and large-sized shade trees.
- The tree removal permit application will need to be submitted by a certified arborist for the removal of two or more trees which are 10" or greater DBH or the removal of any Heritage Tree (defined below).

The 6" threshold for tree removal permits is based upon the recommendation of the Village Foresters, as well as the Chicago Region Tree Initiative, and is discussed in further detail in

the attached LUC agenda materials. In summary, it takes approximately 8 – 10 years for a newly planted tree to reach 6” DBH and during that the time, significant energy and resources have been devoted to preserving the tree and the loss of such trees would have a noticeable impact on the landscape.

Based upon the above permitting recommendations, as well as the recommendations discussed in greater detail below, tree removal permits which are currently approved “over-the-counter” will now require a site visit from the Village Forester thereby extending the timeframe to issue a removal permit.

### Tree Protection

Successful tree preservation policies also focus on ensuring that trees are properly protected during construction. While the Village Foresters have indicated that existing Village Code requirements are appropriate to protect trees during construction, reductions in staffing levels since the Great Recession have prevented the Village from effectively enforcing these regulations. The 2022 Budget includes funds to ensure the proactive enforcement of tree protection policies.

The Village Code requires tree protection measures for work which results in a change to the footprint of the structure(s) which includes:

- Demolition and new construction
- Additions
- Construction of new accessory structures (detached garage, swimming pool, etc.)

Currently, permit applicants are required to submit a tree inventory of the site and identify protected trees (10” diameter and greater) as part of the Canopy Coverage Ordinance. The tree inventory may or may not be performed by a certified arborist and includes the tree species, size, and location. Tree health and risk assessments are not included. During construction, the Village Code requires that a tree’s critical root zone be identified and properly protected (typically with fencing) throughout the course of construction.

To improve the survivability of trees during construction, the LUC is recommending, consistent with best practices, that a certified arborist submit a tree survey and tree protection plan for any residential demolition, new construction or large addition. The tree protection measures are to be inspected proactively throughout construction to ensure compliance.

The LUC intends to further review tree protection requirements to determine whether extending such measures to other types of construction projects is appropriate. A detailed memorandum concerning existing and recommended tree protection measures from the Village Foresters is included in the attached LUC materials.

### Tree Preservation (Replacement Policies)

Given the analysis conducted by the LUC which found that the existing tree canopy policy is not serving to deter the removal of large, mature trees nor sufficiently replenishing tree canopy loss, the LUC is recommending a significant change in the manner in which trees must be replaced when they are removed.

The LUC has identified two categories of trees which will trigger replacement requirements:

*Protected Trees*

Protected trees are trees which have at least one trunk 6” DBH or greater and are in a condition which does not warrant their immediate removal.

*Heritage Trees*

The Committee is recommending additional protections for trees determined to be Heritage Trees. Heritage Trees, based upon recommendations from the Village Foresters, are defined as:

- Oak genus (9 species) of 10” DBH or greater
- Hickory genus (2 species) of 10” DBH or greater
- Any tree 20” DBH or greater

Oak and Hickory genera were specifically selected because:

- They are native to Wilmette.
- There is a large population of Oaks in Wilmette of which many are large, multi-generational trees which provide significant ecological benefits.
- Hickory trees have an incredibly slow growth rate, are difficult to find for new plantings and provide benefits to wildlife.
  - Finding any hickory tree of stature in the Wilmette landscape would equate to a super generational tree.

Trees which are 20” DBH or larger are on average approximately 40 years old and thus can be considered a generational asset that will remain with the property as ownership changes and thus additional protections are warranted.

*Tree Replacement Requirements*

The LUC is recommending that any healthy tree 6” DBH or greater which is removed be replaced with new trees on the subject property or a fee paid in lieu of new tree plantings. Because the LUC’s goal is to deter the unnecessary removal of trees and not to generate revenue, the fees in lieu have been calculated based upon the approximate cost to plant a new 2.5” DBH tree (estimated at \$500).

The LUC is recommending that the removal of Protected Trees be subject to the following replacement schedule:

<b>Protected Trees</b>		
<b>Size of Tree Removed</b>	<b>Tree Replacements*</b>	<b>Fee in Lieu of Replacement (per tree removed)</b>
6 – 9”	TBD in 2023 following data collection	TBD in 2023 following data collection
10 – 12”	2	\$1,000
13 – 16”	3	\$1,500
17 – 19”	4	\$2,000

\*Replacements trees will need to be 2.5" DBH at planting

As an example, if a property owner was to remove a healthy 15" tree, they would have the option of planting three new trees on the property (selected from a tree planting list curated by the Village Foresters) or pay a fee of \$1,500 in lieu of new plantings. The same property owner could elect to plant one tree, thereby reducing the fee in lieu of planting by \$500 (based on the approximate cost for a new tree) for a total fee of \$1,000.

Heritage Trees would be subject to the following replacement schedule:

<b>Heritage Trees</b>		
<b>Size of Tree</b>	<b>Tree Replacements</b>	<b>Fee in Lieu of Replacement (per tree removed)</b>
10 – 19" (Oak and Hickory)	Inch for Inch	\$175 per inch
20"+	Inch for Inch	\$175 per inch

For reference, the cost to remove a Heritage Tree would be as follows:

<b>Size of Tree Removed</b>	<b>Tree Replacements</b>	<b>Fee in Lieu of Replacement (per tree removed)</b>
10"	10" (4 trees)	\$1,750
15"	15" (6 trees)	\$2,625
20"	20" (8 trees)	\$3,500
25"	25" (10 trees)	\$4,375
30"	30" (12 trees)	\$5,250
35"	35" (14 trees)	\$6,125
40"	40" (16 trees)	\$7,000

In this scenario, a property owner could choose to reduce the fee by planting new trees on the property. For example, if a 15" Oak tree is removed, the property owner could plant two new trees totaling 5" DBH (2.5" per new tree) which would reduce the fee by \$875 (5" x \$175); the total fee in lieu of replacement would then be \$1,750.

In addition to the replacement requirements for Heritage Trees, the following additional protections are proposed:

- Prohibiting removals in the required yards, subject to a variation process
- Neighbor notification

### *Required Yards*

The LUC recommends prohibiting the removal of Heritage Trees in the required yards as defined by the Zoning Code (front, side and rear). Property owners may submit a variation request for removal of such trees. No such prohibition would exist within the buildable area of the lot as the policy is intended to balance the value of trees to the community with private property rights and the desire for continued reinvestment in the Village's aging housing stock. The replacement requirements outlined above would apply to any tree removal, whether in the required yards or in the buildable area.

As part of the variation process, and consistent with a number of other minor zoning variations, an administrative variation process is recommended which would provide staff the ability to conduct an individualized assessment of the property in order to authorize removals in the required yards for certain construction hardships (examples: the proximity of the tree to the over dig for new foundations or if a tree is located in the middle of a 50 foot wide lot in the required front yard which does not have alley access).

As part of the administrative review, the Village would notify neighbors (directly across the street, behind and next door) if Village staff conditionally approves the tree removal. If a neighbor objects to the variation (tree removal), the application is considered denied. If the applicant wishes to pursue the request, they may then apply to the Zoning Board of Appeals (ZBA).

If Village Staff does not authorize the removal, the property owner may seek approval from the Zoning Board of Appeals with final authority resting with the Village Board. In such scenarios, the standard 250' notification requirements for variances would apply.

### *Neighbor Notification*

To address concerns from residents who have experienced large tree removals without notification for adjacent properties, and to provide neighbors an opportunity to engage in a dialogue to preserve trees, the LUC is recommending neighbor notification prior to the following tree removals:

- Heritage Trees anywhere on a property.
- When multiple trees totaling 20" DBH or more will be removed.
  - For example: the removal of two 10" DBH trees or one 6" DBH and one 14" DBH tree.

The notification would be sent by the applicant to the property directly across the street, the property directly behind and the two properties on each side of the subject property.

### Penalties

To ensure compliance with the proposed tree preservation policies, the LUC is recommending the following penalties:

- Increasing the maximum fine for removal of a private property tree without a permit from \$1,500 to a fine of up to \$7,500.
  - This is consistent with the fine structure for the removal of parkway trees without a permit.

- Escalating fines for contractors who repeatedly violate provisions of the tree preservation/protection ordinance.
- Implement fines for failing to plant replacement trees when required and late fees when a fee in lieu of plantings is not made on time.

Current penalties for the improper removal of parkway trees (up to \$7,500) and violations of tree protection standards (up to \$750 per day the violation persists) were considered sufficient.

As with the vast majority of fines in the Village Code, the Corporation Counsel would have the ability to settle matters for amounts less than the maximum fine or proceed to administrative adjudication at which the administrative judge would issue a fine or broker a settlement.

### Zoning Incentives

At the outset of the LUC's review, Village Staff held virtual meetings with local developers, architects and landscapers. Based on feedback received from these meetings, it was determined that the Village's Zoning Ordinance may inadvertently discourage the preservation of trees in certain circumstances. To encourage the preservation of trees during single-family residential development, the LUC is recommending an expansion of the variations which qualify for expedited administrative review when a protected tree can be preserved. The expedited process would reduce the time it takes to go through the variation process from 50 to 25 days. Qualifying projects would include:

- Required rear yard setbacks
- Required interior side yard setback
- Side yard adjoining a street setback requirement
- Front yard setback requirement
- Requirement for two enclosed parking spaces

The LUC held a Public Hearing on these amendments on January 25, 2022. An ordinance amending the Zoning Code to incentivize tree preservation during construction will be introduced at the February 22, 2022 Village Board meeting.

### Other Miscellaneous Items

The above is a high-level summary of the LUC's recommendations. A number of other important changes are also recommended which include but are not limited to:

- Consolidate all tree-related components of the Village Code into one, easy to find and understand section.
- The creation of a segregated tree account in which replacement fees will be deposited to be utilized for urban forest best management practices.
  - This may include providing trees at no or reduced cost for plantings on private property, particularly when a homeowner has removed a dead, hazardous or invasive tree.
- Required reporting to the LUC by October 2023 to review the implementation of the revised tree preservation and protection policies.
- An Administrative Tree Manual will be created which will include a list of acceptable replacement trees, how replacement requirements for trees which are in decline but do not require immediate removal will be assessed, best practice for new tree plantings, list of species considered to be invasive, etc.

- Enhanced public education efforts to inform residents of the new tree policies and to communicate the value trees provide to the community.

### **New Village Forester/Tree Preservation Officer Position**

To adequately implement the above policy revisions, Village Staff with the concurrence of the LUC, recommends creating a new Village Forester/Tree Preservation Officer position which will be responsible for administering the revised tree preservation and tree protection policies.

Per industry best practices, incorporating oversight from a professional arborist throughout all phases of development, including, planning, design, pre-construction, construction, landscaping, and post construction is critical to the success of the LUC's recommendations. Each phase provides equal opportunity for input/oversight which collectively plays an integral role in tree preservation.

To that end, the new position would be assigned to the Community Development Department and would be responsible for processing all tree removal permits, including site visits and fee waivers when applicable, reviewing construction plans for compliance with tree preservation and protection policies, engaging with developers and Community Development plan review staff to identify creative alternatives to preserve trees, working with property owners on the selection of new trees, and proactively enforcing tree protection standards throughout construction.

### **Budget Impact**

Based upon existing staff resources and feedback from comparable communities, the recommended policy changes, including the proactive enforcement of tree protection standards, will necessitate a new Village Forester position.

The estimated cost of a new Forester is \$120,000 (salary and benefits). This would have a net impact on the 2022 budget of \$90,000 as the newly created full-time code enforcement position, intended to focus on tree protection, would instead remain as part-time.

Based upon 2019 construction projects which triggered the Canopy Coverage Ordinance, the proposed fee schedule would have generated approximately \$170,000 in revenue (assuming all projects paid the fee in lieu of replacement). The funds generated from the fees in lieu of replacement may be used to offset the cost of the new Village Forester position.

### **Documents Attached**

1. PowerPoint Presentation for February 8, 2022 Village Board meeting
2. Agenda materials from the Land Use Committee's review: <https://www.wilmette.com/wpfb-file/consolidated-tree-preservation-materials-pdf/>