

CHAPTER 1232
Tree Protection

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CROSS REFERENCES

Box elder trees, female, as nuisance - see M.C.L.A. 124.151
 Cutting or destroying trees - see M.C.L.A. 247.235, 247.241, 752.701 et seq.
 Malicious destruction of trees - see M.C.L.A. 750.382
 Obstruction of visibility by vegetation - see P. & Z. 1268.10
 Heritage tree list - Pt. 12, Title 4, Appx. A-4

1232.01 FINDINGS AND PURPOSE.

The tree canopy contributes to the distinctive and rural visual character of the Village of Franklin, and trees are important natural resources and assets of the Village that residents and visitors admire and cherish. The Village's trees provide a vital link to nature by softening the visual landscape, improving air quality, creating habitat for birds and wildlife, reducing flooding and erosion, protecting against wind and heat, providing important physical, aesthetic, recreational, and economic benefits to Village residents, and supporting property values. Yet, the spread of development, new construction, and increasing demands upon natural resources have the effect of encroaching upon, despoiling, threatening or eliminating many mature trees and the natural resources and processes associated with them. Therefore, the purpose of this chapter is to promote the health, safety and general welfare of Village residents through the regulatory program set forth in this chapter, which is designed to protect, preserve and conserve mature trees, manage and provide oversight of the removal of trees, and provide for replacement of trees removed in the Village.
 (Ord. 2001-02. Passed 4-9-01.)

1232.02 DEFINITIONS.

The following terms and their derivatives shall have the following meanings:

- (a) Building Envelope. The ground area of a lot or parcel of land enclosed or to be enclosed by the exterior walls or perimeter (i.e., the "foot print") of principal and accessory buildings and associated improvements, including but not limited to pools, decks, patios, walks, tennis courts, driveways, and utility services.
- (b) Diameter Breast Height (DBH). A tree's diameter in inches measured 4½ feet above ground.
- (c) Drip Line. An imaginary vertical line extending downward from the outermost tips of a tree's branches to the ground.
- (d) Heritage Tree. A tree that is included in American Forests' National Register of Big Trees, the Michigan Botanical Club's Michigan Champion Trees List, or in the Village's Heritage Tree List in Appendix A-4.
- (e) Person. Any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the Village, and all tree removal companies.
- (f) Protected Tree. Any tree that is six inches DBH or greater in size.
- (g) Remove or Removal. The act of removing, relocating or destroying a tree by digging it up or cutting it down, or the effective removal or destruction through mutilation, damage, poison, "girdling," topping, failure to protect trees during construction, filling, storage or compression of soil or material within the drip line, or other actions that are likely to cause or hasten the death of a tree.

(Ord. 2001-02. Passed 4-9-01.)

1232.03 APPLICABILITY OF CHAPTER.

This chapter shall apply to all lots and parcels of land in the Village and shall be in addition to requirements imposed by any other Village ordinances.

(Ord. 2001-02. Passed 4-9-01.)

1232.04 TREE REMOVAL PERMIT REQUIRED.

Except as otherwise provided in the exemptions in Section 1232.05, below, a tree removal permit shall be required prior to the removal, relocation or destruction of any protected tree.

(Ord. 2001-02. Passed 4-9-01.)

1232.05 EXEMPTIONS.

Notwithstanding the requirement of Section 1232.04, above, the following activities are exempt from the provisions of this chapter and are allowed without a tree removal permit, unless otherwise prohibited by statute or ordinance:

- (a) Removal of non-protected trees;
- (b) Removal of up to two protected trees during any 12-month period on an occupied one-family residential lot or parcel. This exemption shall not apply to removal of heritage trees;
- (c) Removal, pruning or trimming of protected trees within public or private roads or utility rights-of-way or easements in connection with the installation, repair, operation, replacement or maintenance of roads, drains, sewers, sidewalks, and water, electric, gas, cable television, telephone, telecommunication, or other public service or utility lines and facilities, provided that such activities are overseen by a certified arborist or forester and prudent and reasonable efforts are made to prevent or minimize protected tree loss or damage;
- (d) Ordinary trimming and pruning of protected trees as part of landscape maintenance;
- (e) Removal or trimming of dead, severely diseased or severely damaged trees, provided that such death, disease or damage results from a natural cause and not from the action or conduct of the owner or occupant (or contractor or agent thereof) of the subject property; and
- (f) Removal of protected trees located within ten feet of existing principal or accessory structures to reasonably avoid actual or threatened damage to such structures.

(Ord. 2001-02. Passed 4-9-01.)

1232.06 APPLICATION PROCEDURE.

When a tree removal permit is required, an application shall be filed with the Village for review and processing. The application shall be submitted, together with 20 copies (unless the Village Administrator or the Administrator's designee determines fewer copies are needed) of a tree location survey, a nonrefundable application/permit fee set by resolution of the Village Council, and any other information required under this chapter, prior to or concurrent with the submission of a plat or site plan or application for a building permit, whichever may be required.

- (a) Site Plan, Plat or Building Permit. Where a site plan, plat or building permit is required for the proposed activity, the tree location survey shall be considered as part of the site plan, plat or building permit review process. Site plan, plat or building permit approval must precede issuance of a tree removal permit.

- (b) No Site Plan or Plat. Where no site plan or plat is required, the Village shall process, review and render a decision on the tree removal permit application within 45 days after receiving the application and all required information in complete and acceptable form.
- (c) Tree Location Survey Guidelines. The tree location survey shall have a minimum scale of 1 inch = 100 feet and shall include the following information:
- (1) Legal description, shape, boundaries and dimensions of the lot or parcel, together with the existing and proposed locations of all structures and improvements, including existing and proposed utilities, driveways, walks, drains, swales, wetlands, watercourses, ponds and other significant topographic, man-made or natural features. The location of proposed structures or improvements must also be staked in the field.
 - (2) Location and dimensions of all required setbacks and existing and proposed easements.
 - (3) Designation of existing topography and any grade changes proposed for the property, together with an explanation of how proposed grade changes may affect protected trees. The existing and proposed grade at the base of every protected tree shall be indicated on the survey.
 - (4) Location and numbering of all protected trees, including protected trees within adjoining road right(s)-of-way, protected trees within 25 feet of the property lines, and all other protected trees that may be affected by the construction, development or other activity such as, but not limited to protected trees located within areas of proposed right-of-way improvements or off-site utility work. All protected trees to remain or to be removed shall be so designated. The survey shall contain a key identifying the numbered trees by size, common name and condition. All protected trees shall be tagged in the field with their identifying numbers.
 - (5) For an application submitted in connection with a site plan or plat, proposed building envelopes shall be designated, plus an area ten feet outside the building envelope.
 - (6) Tree location surveys shall be performed by actual field survey by a registered land surveyor and verified on-site by a registered landscape architect, certified arborist or forester. Both must be identified by name, address and phone number on the survey.
 - (7) If protected trees are to be relocated, the proposed relocation for such trees, together with a statement as to how those trees will be protected or stored during land clearance, development or construction, and how they will be maintained after construction.

- (8) An explanation and depiction of how protected trees proposed to remain will be protected during land clearance, construction, development and on a permanent basis.
 - (9) A cost estimate and plan for tree replacement, including number, size and species, conforming to the requirements of this chapter.
 - (10) For parcels five acres or larger, an aerial photo (1 inch = 100 feet minimum scale) shall be provided.
 - (11) These survey requirements may be waived, in whole or in part, by the Village Administrator or the Administrator's designee for areas 50 feet or more beyond the construction zone. If so waived, a statement indicating predominant species and estimated number and size of trees in this area will be required.
- (d) On-Site Examination in Lieu of Tree Location Survey. If deemed adequate by the Village Administrator or the Administrator's designee, an on-site examination may be made by a Village representative in lieu of the tree location survey requirements in the following circumstances:
- (1) Where the tree removal permit application pertains to removal or relocation of protected trees on an occupied single-family residential lot or parcel; or
 - (2) Where no more than four protected trees are proposed for removal, provided that none of the trees proposed for removal are heritage trees. (Ord. 2001-02. Passed 4-9-01; Ord. 2002-01. Passed 5-13-02.)

1232.07 REVIEW AND DECISION.

- (a) Decision Making Authority. The decision to grant, grant with conditions or deny a tree removal permit application shall be made as follows:
- (1) Site plan or plat. Where a tree removal permit application is submitted in connection with a plat or site plan, the Village Planning Commission shall first complete its review of, and take action on, the plat or site plan and make a recommendation to the Village Council relative to the tree removal permit application before the Village Council considers the application.
 - (2) No site plan or plat. Where site plan or subdivision plat review is not required for the proposed activity associated with the tree removal, the Village Administrator shall be responsible for reviewing and rendering a decision on the tree removal permit application. Any decision by the Village Administrator to deny an application shall be in writing and shall set forth the reasons for denial.
 - (3) Appeal from Village Administrator's decision. Any applicant who is aggrieved by the Village Administrator's decision concerning a tree removal permit application may appeal to the Village Council by filing

a written appeal with the Village Clerk within ten calendar days after the date of the Village Administrator's decision. Upon receipt of a timely filed written appeal, the Village Clerk shall schedule the appeal for the Village Council's next available regular meeting. The Village Council shall have the power to affirm, modify or reverse the Village Administrator's decision.

(b) Assumption Relative to New Construction/Development. Where a plat, site plan or building permit has been submitted and new construction or development is proposed, it shall be assumed for purposes of this chapter, including but not limited to the computation of replacement tree requirements, that all protected trees located within the designated building envelope(s) or within ten feet thereof, or within existing or proposed rights-of-way, utility easements, areas of site grading or storm water detention/retention areas will be removed regardless of whether the permit applicant presently intends to physically remove those trees.

(c) Review Criteria. When reviewing an application for a tree removal permit, the Village Council or Village Administrator shall consider whether:

- (1) A satisfactory and viable plan designed and intended to avoid or minimize negative impacts to protected trees has been presented;
- (2) There are desirable, prudent and reasonably feasible alternatives that would reduce or avoid negative impacts to protected trees;
- (3) Trees proposed for removal pose a safety hazard; cause unsafe vision clearance or threaten to injure, damage or disrupt persons, property or a utility service; prevent or obstruct access to a lot or parcel; or unreasonably prevent development, improvement or use of a lot or parcel. It is the intent of this provision that a permit should not be granted for the removal of a protected tree where a reasonable alternative design solution exists that is consistent with the permitted use of the property;
- (4) The proposed tree removal does not threaten the public health or safety or materially increase the risk of flooding or erosion on the subject or adjacent property, nor will it endanger a wetland or watercourse;
- (5) No alternative location for the proposed structure or improvement that necessitates the removal of a protected tree can be achieved without causing undue hardship to the applicant;
- (6) Heritage trees will be preserved and protected to the fullest extent that is reasonable and feasible; and
- (7) The application complies with the tree replacement requirements of this chapter.

(d) Plat Site Plan or Building Permit Review. When a plat, site plan or building permit is submitted in connection with a tree removal permit application and the tree removal permit application is denied, the plat, site plan or building permit shall also be denied or else tabled unless and until the applicant modifies the plan to satisfactorily reduce or eliminate the negative impact on protected trees.

(e) Conditions. The Village Council or Village Administrator may attach reasonable conditions to the approval of a tree removal permit considered necessary to ensure the intent of this chapter will be fulfilled, and to minimize damage to, encroachment upon, or interference with protected trees.

(f) Tree Replacement. The Village Council or Village Administrator shall, at the time a tree removal permit is granted, specify the time by which tree replacement required under Section 1232.09 must be completed.

(g) Performance Guarantee. The recipient of a tree removal permit shall post a performance guarantee in the form of a cash deposit, corporate surety bond, irrevocable bank letter of credit, or such other form that is acceptable to the Village, in an amount determined adequate by the Village Council or Village Administrator to guarantee compliance with the tree removal permit, any conditions attached thereto, and the requirements of this chapter.

(h) Consultants. The Village may engage consultants to review and advise the Village regarding the tree removal permit application, such as but not limited to a forester, arborist, landscape architect, planner or engineer. The applicant shall be responsible for payment of all review expenses related to a consultant's review of the application, in accordance with Chapter 210 of the Codified Ordinances.
(Ord. 2001-02. Passed 4-9-01; Ord. 2002-01. Passed 5-13-02.)

1232.08 PERMIT DURATION.

(a) For tree removal permits submitted in connection with an application for plat or site plan approval or a building permit, a tree removal permit shall not be issued nor be effective, nor shall the permit holder remove or cause the removal of any protected tree until after final approval of the site plan, preliminary plat or building permit has been obtained and, if applicable, the Village Engineer has approved construction and engineering plans for the proposed construction or development activity.

(b) A tree removal permit shall remain in effect for one year or the duration of the approved building permit, site plan or plat, if any, whichever period is greater.
(Ord. 2001-02. Passed 4-9-01.)

1232.09 TREE REPLACEMENT.

(a) Requirement. A tree removal permit holder shall either replace or relocate every removed protected tree on a one-for-one basis.

(b) Deciduous Trees. All deciduous replacement trees must measure at least 3-inch diameter at six inches above ground. However, for every additional one half-inch increment a replacement tree exceeds the minimum 3-inch diameter, the Village shall credit the permit holder with having replaced an additional one-half tree.

(c) Coniferous Trees. All coniferous replacement trees must measure at least 10 feet in height. However, for every additional one foot increment a replacement tree exceeds 10 feet, the Village shall credit the permit holder as having replaced an additional one-half tree.

(d) Heritage Trees. When a heritage tree is permitted to be removed, replacement trees shall be provided to a minimum of 50% of DBH of the heritage tree being removed. Such replacement trees may be provided individually or on a cumulative basis to meet the 50% DBH requirement.

(e) Dense Woods Option. As an option or partial alternative to the above, the Village may approve replacement trees that are smaller in size in situations where the intent is to recreate or create a densely wooded area. This option shall consist of tightly grouping trees that are a minimum of 3/4-inch diameter, and shall be used only in situations and locations where it is appropriate to create a densely wooded effect. When this option is used, the sum of the diameter of the replacement trees shall be equal to the sum of the DBH of the trees that are being replaced.

(f) Quality. Replacement trees shall have shade potential and other characteristics determined by the Village to be comparable to the removed trees and shall be Michigan Department of Agriculture Nursery Grade No. 1 or better.

(g) Planting and Guarantee. Replacement trees shall be staked, wrapped, fertilized and mulched, and shall be guaranteed by the permit holder to exhibit a normal growth cycle for at least one year following planting.

(h) Damage to Saved Trees. Permit holders shall be required to replace protected trees originally intended to be saved when such trees become excessively damaged during construction or development.

(i) Replacement Tree Location. The Village shall approve relocation or replacement tree location to provide optimum enhancement, preservation and protection of trees and wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced on-site and within the same general area as trees removed, but such trees shall not be relocated or replaced in the building envelope of a structure or within 10 feet thereof, nor shall such trees substitute for or count toward landscape screening or buffer requirements that may be imposed under other Village ordinances.

(j) Off-site Relocation or Replacement. Where it is not feasible or desirable to relocate or replace trees on-site, relocation or replacement may be made at another approved location in the Village.

(k) Village Tree Fund. Where it is not feasible or desirable to relocate or replace trees on or off-site, the tree removal permit holder may satisfy the tree replacement requirement by paying into the Village Tree Fund, which fund is hereby created, a sum of money approximating the current market price to purchase and plant the replacement trees that would otherwise be required. The Village shall use the Village Tree Fund for the purpose of planting, replacing, maintaining and preserving trees in the Village.

(Ord. 2001-02. Passed 4-9-01.)

1232.10 TREE PROTECTION DURING CONSTRUCTION OR DEVELOPMENT.

(a) Prior to the land clearing or tree removal stage of development or construction, the tree removal permit holder shall clearly mark by painting, flagging, or other approved method, all trees to be removed, and shall erect and maintain suitable barriers to protect remaining protected trees. Protective barriers must be inspected and approved by the Village before the work begins. Protective barriers shall be kept in place until the Village authorizes their removal.

(b) The permit holder shall not cause or allow any construction or development activity to occur within the drip line of a protected tree proposed to remain, nor shall any solvents, building material, vehicles, construction equipment, soil deposits or fill, or other harmful materials be allowed to be placed, kept, parked or stored within the drip line of such tree(s).

(c) No damaging wire, sign or other device shall be attached to any protected tree proposed to remain.

(Ord. 2001-02. Passed 4-9-01.)

1232.11 ENFORCEMENT AND ADMINISTRATION.

(a) This chapter shall be enforceable by the Village Administrator, Village Building Official, Village Police and such other enforcement official(s) as the Village Council may appoint or authorize.

(b) To ensure enforcement of this chapter and the approved plan for tree removal and replacement, various inspections may be performed at the site at the direction of the Village. The tree removal permit holder shall not interfere with or prevent such inspection(s), and the permit holder will be responsible for any inspection fees.

(c) The Village shall have the authority to promulgate additional administrative rules, regulations and procedures that are consistent with the provisions of this chapter in order to implement and administer this chapter.

(Ord. 2001-02. Passed 4-9-01.)

1232.12 VARIANCE.

The Village Council may grant a variance from the requirements of this chapter when undue hardship will result from strict compliance. In granting a variance, the Council may attach conditions the Council deems necessary or appropriate to further the public interest in tree protection.

(Ord. 2001-02. Passed 4-9-01.)

1232.99 PENALTIES, SANCTIONS, REMEDIES.

(a) Any person who removes a non-exempt protected tree or violates any provision of this chapter or any term or condition of a tree removal permit shall be responsible for a municipal civil infraction and shall be subject to the penalties, sanctions and remedies prescribed in Section 202.99 of these Codified Ordinances and in Chapter 87 of the Revised Judicature Act, being M.C.L.A. 600.8701 et seq.

(b) Each violation of this chapter or unauthorized removal of a protected tree shall be deemed a separate offense.

(c) Any act performed or perpetrated in violation of this chapter is declared to be a nuisance per se, and the Village may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.

(d) The Village may issue a stop work order or withhold issuance of certificates of occupancy, permits or inspections until the provisions of this chapter, the tree removal permit, or any conditions attached thereto, have been fulfilled.

(e) The Village may require replacement of illegally removed trees on an inch-for-inch basis or payment to the Village Tree Fund.

(Ord. 2001-02. Passed 4-9-01.)