

VILLAGE OF DOWNERS GROVE
Report for the Village
11/12/2019

SUBJECT:	SUBMITTED BY:
Text Amendments to Chapters 7 and 24 of the Municipal Code	Stan Popovich, AICP Director of Community Development

SYNOPSIS

The Village has prepared text amendments to sections of Chapters 7 and 24 of the Municipal Code to provide greater protection to parkway trees during construction.

STRATEGIC PLAN ALIGNMENT

The goals for 2019-2021 include *Steward of Financial and Environmental Sustainability, Exceptional Municipal Services and Top Quality Infrastructure.*

FISCAL IMPACT

N/A

UPDATE & RECOMMENDATION

This item was discussed at the November 5, 2019 Village Council meeting. Staff has provided responses to the following questions that were asked during the First Reading of this item.

How does the Village address tree damage that may be discovered after the work is completed?

The Village requires a tree protection bond for any permitted work that may impact a parkway tree. Once the work has been completed, the contractor must pass all required final inspections before refunding any bonds associated with the permit. The final right-of-way inspection includes a review of parkway trees to ensure there is no visible damage to the tree. Bonds are typically refunded two to three weeks after the inspections are complete.

Could residents be notified of the fines for damaging or destroying a parkway tree after applying for a permit?

In the vast majority of new single family permit applications the builder, not the homeowner, applies for the building permit. The Village corresponds and speaks directly with the applicant in regards to site management and building permit requirements. The Village typically does not have any contact with the homeowner during the construction process.

Section 24.8 of the ordinance was further amended to clarify that violations of this code that result in tree loss shall result in payment of a replacement tree fee in addition to any required fine. The ordinance was not amended to include a definition of “nuisance tree” as the Village does not classify any parkway tree as a nuisance, except that per section 24.6 of ordinance, only “any live or dead tree which is infected with an infectious disease, or harbors vectors (insects or arthropods) that transmit infectious disease shall be declared a public nuisance to public health and welfare”.

Staff recommends approval on the November, 12 2019 active agenda.

BACKGROUND

In the past several months, staff has observed the following construction activities which may negatively impact parkway trees:

- Installation of utility service lines (water, sanitary sewer, natural gas) too close to parkway trees and/or use of impactful installation techniques
- Construction or replacement of sidewalk squares and driveway aprons in close proximity to parkway trees
- Construction workers moving the protective tree fencing and performing construction work within the fenced area around the parkway tree

Currently, staff identifies potential parkway tree / utility (storm sewer, water and sanitary) conflicts which may negatively impact the parkway tree. As part of the plan review, the builder is required to address the conflict issues prior to the issuance of a permit.

To reduce the likelihood that construction activities damage or destroy adjacent parkway trees of a significant size (24 inches or greater diameter), staff has made the following changes to the building permit review and inspection process and is proposing the following amendments to Village Code.

- Hold an on-site pre-demolition meeting to discuss tree preservation regulations, construction expectations and potential issues which may impact adjacent parkway trees (Section 24.106)
- During site management inspection discuss parkway tree protection (Section 7.602)
- Require the installation of a sign on the tree protection fencing, for all trees, stating that the fencing cannot be relocated or removed for any reason. (Section 7.1801(e))
- Inspect the parkway tree as part of the water service pre-tap inspection to make sure that the installation of the water service does not negatively impact the tree. (Section 24.106)
- Require the builder to pass the water service pre-tap inspection prior to performing any trenching or augering. (Section 24.106)
- Require the builder to submit a Tree Risk Assessment Qualified Report (TRAQ) for review and approval prior to the issuance of a building permit. This report shall be completed by a Tree Risk Assessment Qualified Professional and shall take into account utility conflicts and other issues which may affect the tree. (Section 24.106)
- Increase the amounts of the value of parkway trees, fees to be paid to the Village for damage or loss of a parkway tree and fines for damaging or destroying a parkway tree. (Section 24.107)

Parkway Tree Fees/Fines	Existing Fees/Fines	Proposed Fees/Fines
Code Violation, 1st Offense	\$500	\$2,000
Code Violation, 2nd Offense	\$1,000	\$3,000
Code Violation, 3rd & Subsequent Offense	\$2,500	\$5,000
Unlawful Removal of Tree	\$100 per inch/trunk diameter	\$275 per inch/trunk diameter

ATTACHMENTS

Ordinance

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: November 12, 2019
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE AMENDING CONSTRUCTION SITE MANAGEMENT PERMITS AND AMENDING PROVISIONS CONCERNING THE PROTECTION OF TREES AND SHRUBS", as presented.



SUMMARY OF ITEM:

Adoption of this ordinance shall amend construction site management permits and amend provisions concerning the protection of trees and shrubs.

RECORD OF ACTION TAKEN:

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ORDINANCE NO. _____

**AN ORDINANCE AMENDING CONSTRUCTION SITE MANAGEMENT
PERMITS AND AMENDING PROVISIONS CONCERNING
THE PROTECTION OF TREES AND SHRUBS**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by shading/underline; deletions by ~~strikeout~~):

Section 1. That Section 7.602. is hereby amended to read as follows:

7.602. Inspections Prior to the Commencement of Work.

For projects involving excavation, site or foundation work in excess of six hundred (600) square feet, an inspection of the pre-construction site conditions shall be required to determine compliance with the Village of Downers Grove Construction Site Management Ordinance, Article XVIII of this Chapter, and Prevention of Injury to Trees-Public Right-of-Way, Section 24.106 of the Downers Grove Municipal Code, prior to the commencement of construction activities on the site.

Section 2. That Section 7.1801. is hereby amended to read as follows:

7.1801. Demolition/Construction Site Management.

An applicant for a demolition and/or building permit ("permit applicant") shall be responsible for safe construction site management during all phases of demolition and/or construction of permitted improvements. The following minimum standards shall be complied with prior to the commencement of work and throughout the duration of the project.

- (a) Notification. Each permit applicant that seeks a demolition permit for an existing house or garage or a building permit for any construction that will add six hundred (600) square feet or more of gross floor area to an existing house or garage shall be required to provide notification to all residents of property located within one hundred (100) feet of the subject property. Such notification shall be made no less than seven (7) days prior to the commencement of any work and shall consist of providing the residents with a copy of an informational brochure provided by the Village, disclosure of a site plan, a general explanation of the work to be done, and the name, address and telephone number of the individual supervising the work. Each permit applicant shall submit written certification, on a form provided by the Village, of personal notification to all residents of property located within one hundred (100) feet of the subject property of the pending work as a condition precedent to issuance by the Village of a permit for work on the subject property.
- (b) No structure shall be eligible for demolition unless and until the permit applicant has notified all utilities having service connections within or about the structure such as water, electric, gas, sewer, telephone and any other connections. The Village Public Works Department shall be notified to remove the water meter or the Village may give written permission to allow the permit applicant to remove the water meter. The Sanitary District must be notified regarding the capping of sanitary sewers. A permit to demolish a structure shall not be issued until a release is provided by the relevant utilities stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or capped in a safe manner.
- (c) No structure shall be eligible for demolition unless and until the permit applicant has submitted and the Village has approved a grading and site restoration plan or an application for construction has been placed on file with the Village and the applicant has been issued an initial review letter from the Village.

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(d) The permit applicant for demolition and/or construction shall be required to install and maintain in good working order a six (6) foot high temporary chain link construction fence with driven posts around the perimeter of the lot for all residential construction, and an eight (8) foot high temporary chain link construction fence with driven posts around the perimeter of the lot for all commercial construction. For both residential and commercial areas, the fencing must have a gated opening which shall be closed when no construction or demolition activity is being performed on the site. Fencing must be installed prior to the commencement of any construction or demolition on the site and must remain in place until the final grading of the property commences. Erosion control measures (silt fencing) must be installed and maintained on the inside of the perimeter fence. The Director of Community Development shall have the authority to determine the fencing requirements, excluding height requirements, and/or to require a written fencing plan for construction activities. The Director shall have the discretion to determine the appropriate timing and location of the fencing requirements in order to adequately protect the health, safety and welfare of the public and the adjacent residential and commercial properties.

(e) Each tree on the property, including the parkway, must be protected with fencing, and as provided in Section 24-724.106, of this Code. A tree protection area sign shall be posted on the tree protection fencing in a prominent location, visible from the public right-of-way. Such sign shall be posted not less than four (4) nor more than seven (7) days in advance of any site commencement of work. Such sign shall be maintained on the fence until all work on the permitted property has been completed and approved or until removal is approved by the Director. The size, shape and message of such sign shall be established by the Director of Community Development. The tree protection area sign shall be obtained from the Village wherein an administrative fee as set forth in the Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be assessed by the Village.

(f) Construction/demolition debris and refuse containment shall be required for all job sites. Containment shall occur on the property that is the subject of the permit, and shall be within a dumpster or container that shall be fully covered to prevent windblown debris. Such dumpster or container shall be set back a minimum of five (5) feet from the front lot line and a minimum of five (5) feet from the side lot line. All such dumpsters or containers shall be covered at all times when no work is being performed on the property that is the subject of the permit. Such dumpster or container shall not be located on public property, including but not limited to, parkways or sidewalks.

(g) Construction sites shall be provided with a portable toilet. The location of the portable toilet shall be set back as far as possible from all property lines to within three to four (4) feet from the excavation but not less than a minimum of five (5) feet from the front lot line and a minimum of five (5) feet from the side lot line, and whenever possible the portable toilet shall be located in the rear yard. Such portable toilet shall not be located on public property, including but not limited to, parkways or sidewalks.

(h) The permit applicant shall maintain all construction/demolition sites free and clear of debris and refuse generated by site preparation, reconstruction or demolition of buildings and structures.

(i) The hours of construction/demolition are as follows:
7:00 a.m. to 7:00 p.m. Monday-Saturday
No Work on Sundays

(j) All construction work shall be limited to the permitted property. No permit issued pursuant to this Section shall authorize any entry onto the property adjoining the permitted property or any work for which entry onto property adjoining the permitted property is or may be necessary, unless a proper right of entry has been

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secured from the owner of such property.

(k) Posted Notice of Rules and Regulations: The applicant shall post on the permitted property in a prominent place, visible from the public right-of-way, a sign containing notice of the rules and regulations applicable to demolition and construction work. The applicant shall also post notice of the contractor's name and a phone number of the individual supervising the work. Such sign shall be posted not less than four (4) nor more than seven (7) days in advance of the commencement of work. Such sign shall be maintained on the permitted property until all work on the permitted property has been completed and approved or until removal is requested ~~approved~~ by the Director. The size, shape and message of such sign shall be established by the Director of Community Development. The sign containing notice of rules and regulations shall be obtained from the Village wherein an administrative fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be assessed by the Village.

(l) The noise regulations contained in Section 15-5.1 of this Code shall be applicable.

(m) The applicant shall cause all dirt, mud, gravel and other debris from the subject property or related to the work conducted on the subject property to be cleaned regularly every day from all streets and sidewalks adjoining or in the area of the subject property.

(n) No streets, sidewalks or driveways shall be blocked so as to prevent pedestrian or vehicular traffic. An applicant performing any work resulting in the disruption of any pavement on a street, sidewalk or other public place or making any excavation or opening in the same shall maintain suitable barricades to prevent injury of any person or vehicle by reason of such work. All such barricades shall be protected by suitable lights at nighttime. Any defect in any pavement shall be barricaded to prevent injury. Permit applicants must comply with Section 19-44(i) of this Code regarding Traffic Control Procedures and must submit a construction site parking plan outlining the proposed location for all parking of contractor and worker vehicles. All vehicles shall comply with all Village ordinances. The Director of Community Development shall review the construction parking plan and shall either approve the plan as submitted, approve the plan with modifications and/or conditions or deny the plan. The applicant shall adhere to the terms and conditions of the approved construction parking plan. Failure to comply with the terms and conditions of the approved construction parking plan shall constitute a violation of this ordinance.

(o) On all demolition sites and construction sites or in any situation where airborne particles may be disbursed, proper watering is required in that airborne particles shall be controlled at the property that is the subject of the permit during work hours by thoroughly saturating all portions of the structure with water. Such spraying shall be undertaken at all times necessary to thoroughly control the creation and migration of airborne particles, including without limitation, dust from the property that is the subject of the permit. The water source for control of airborne particles shall be either (i) a water tanker truck with pump capacity of one hundred (100) gallons per minute at the nozzle; or (ii) an approved public water hydrant. Water shall be delivered from the water source to the subject property by a hose with a minimum diameter of 2 ½ inches, which may be reduced to 1 ½ inches when on the property that is the subject of the permit. If a public water hydrant is used, a Village water meter and proper hydrant wrench must be used after acquiring a permit from the Public Works Department in accordance with Chapter 25-11 of the Downers Grove Municipal Code. Any hose leading from a public water hydrant and crossing a driveway, street, alley or other vehicular right-of-way or path must be bridged in a manner sufficient to protect the water system.

(p) No open burning is permitted at the demolition/construction site.

(q) Permit applicants shall submit written acknowledgment, on a form provided by the Village, of rules for construction/demolition site management.

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(r) Permit fees shall be paid in the amount set forth in Article VIII of this Code.

(s) A bona fide certificate of insurance shall be supplied to the Village, showing minimum insurance coverage from an insurance company with at least a B+ rating of one million dollars (\$1,000,000.00) bodily injury, one million dollars (\$1,000,000.00) property damage and statutory coverage for workers compensation and shall name the Village of Downers Grove as an additional insured. A certificate of insurance shall accompany the permit applications. The building official may waive the insurance requirement for minor demolition work.

(t) A site management cash bond as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be deposited with the Village and shall be kept in a separate account. Such cash bond shall be in addition to all other application and processing fees, costs, escrows, bonds and performance securities required, and stand as security for the full and complete performance by the permit applicant of the work covered by the permit, insuring the initiation of construction in a timely manner and proper management of the site, subject to the following provisions:

(i) The Village shall have the right at all times, at its option, to draw on the site management bond for the costs, including, without limitation, legal fees and administrative expenses incurred or to be incurred by the Village in exercising any of its rights under this Chapter in the event: 1) the applicant undertakes work in violation of any provision of this Chapter or of any permit issued or plan approved pursuant to this Chapter; or 2) the applicant fails or refuses to complete any work authorized by any permit issued under this Chapter in accordance with all plans approved in connection with said permit. The Village's determination of such costs shall be based either on costs actually incurred by the Village or on the Village's reasonable estimates of costs to be incurred.

(ii) If the Village draws on the site management bond, then the applicant shall replenish the bond to the full amount required by this section immediately after demand therefore is made to the applicant in writing by the Village. Any failure of the applicant to replenish the bond shall result in cancellation of the related permit, which permit shall not be reissued thereafter except after the filing of a new application therefore, repayment of the permit fee, and establishment of a new site management bond.

(iii) Upon certification by the building official of the satisfactory completion of the work, the balance of the cash bond shall be refunded to the permit applicant.

(u) (1) The applicant shall cause the demolition and/or construction of a structure to be completed with due diligence, in good faith and without delay. The applicant shall notify the Village at least twenty-four (24) hours prior to the commencement of demolition. Once the work commences on the site, the applicant shall continuously pursue completion of the work. If no substantial work is being pursued on the site for thirty (30) consecutive days or more once the work has commenced, then the site shall be deemed abandoned. Once the Village issues a notice of abandonment the applicant shall within ten (10) days from issuance of the abandonment notice either:

(i) commence work on the site and diligently pursue completion of the demolition; or

(ii) restore the property to a final grade and grass seeded condition or commence construction activities pursuant to a valid building permit.

For purposes of this Section, completion of demolition shall be defined as removal of all portions of the structure both above ground and below ground level and restoration of the property to a final grade and grass seeded condition.

(2) Additional fee for late work: If the applicant fails to comply with this Section he/she shall pay a late work fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" per day for each day until such work is completed. The Village shall deduct such fee from the site management bond.

(v) Fees and Fines: Failure to comply with the minimum standards will constitute a violation of this Code, subjecting violators to a stop work order and a fine as set forth in Chapter 1 of the Downers Grove

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Municipal Code per violation, for every day the violation exists. In addition to any other penalties provided in this Section, the Village Attorney shall have the authority to seek injunctive or other relief in the Circuit Court of DuPage County to enforce and compel compliance with the ordinance of the Village. Such injunctive action may be combined with counts seeking monetary fines as provided herein.

(i) Street Cleaning. If the applicant shall fail to clean all sidewalks and streets adjoining and in the area of the subject property, then the applicant shall pay a fine as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" for each violation. The Village shall deduct such fine from the site management bond provided in Section (t). This charge shall be in addition to any fines assessed pursuant to Ordinance. (Ord. No. 1527, § 1; Ord. No. 2918, § 1.)

Section 3. That Section 24.100.ART. is hereby added to read as follows:

24.100.ART. In General.

Section 4. Section 24.1. is hereby renumbered to be Section 24.101.

24.1. Purpose.

The purpose of this ordinance is to provide for the proper establishment of new trees, the protection and maintenance of existing trees and the timely removal of hazardous or infectious diseased trees on both public and private property. It is further intended to balance the property rights of individual property owners with those of the overall health, safety and welfare interests of the Village. Trees enhance and preserve the air quality of the Village through the filtering effect of trees on air pollutants, reduce noise within the Village through the baffle and barrier effect of trees on the spread of noise, reduce topsoil erosion through the soil retention effect of tree roots, reduce energy consumption through the wind break and shade effects, provide nesting areas for birds and other wildlife which in turn assist in the control of insects, reduce storm water runoff and the costs associated therewith, replenish ground water supplies and protect and increase property values.

For state law as to power of Village to plant trees, see Ill. Rev. Stat., ch. 24, § 11-72-1.

(R.O. 1925, § 204.)

Section 5. Section 24.2. is hereby renumbered to be Section 24.102.

24.2. Authority/Determination of appropriate trees and shrubs.

The Village Forester shall determine appropriate tree and shrub species, sizes, planting locations, and spacing distances for all plantings in the right-of-way of any street or alley and on all property owned or maintained by the Village. The Village Forester, ~~as an entity of the Village's Public Works Department,~~ Manager or designee shall have the power to promulgate and enforce rules, regulations and specifications concerning the planting, pruning, removal, spraying, maintenance and protection of trees and shrubs upon the right-of-way of any street or alley and upon all property owned or maintained by the Village. (R.O. 1925, § 206.)

Section 6. Section 24.3. is hereby renumbered to be Section 24.103.

24.3. Tree Removal Permit.

A tree removal permit shall be required for the removal of any tree on Village owned or maintained land. Any permit authorizing removal may be subject to such conditions as the Director of Public Works or his/her

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designee may deem necessary or appropriate to minimize damage to other trees or vegetation on a site, and may include the installation of protective fencing.

(a) *Tree Removal Application.* The application for tree removal permit shall contain:

- (1) Name and address of applicant;
- (2) Commonly known address for the property where the tree sought to be removed is located;
- (3) A written statement indicating the reason for removal of the tree(s);
- (4) A general description of the tree(s) to be removed, including species and size; and
- (5) Name and address of the contractor or other person who is proposed as having responsibility for the tree removal.
- (6) Provide two (2) copies of the plans and specifications showing the work to be completed; and
- (7) Provide plans for tree protection of other trees in the immediate area.

(b) *Fees for Tree Removal Permit.* A tree removal permit fee shall be based upon the appraised value of each tree to be removed. The appraisal values shall be determined by the Village Forester using the most current edition of the Guide for Plant Appraisal prepared by the Council of Tree and Landscape Appraisers, which is edited, published and copyrighted by the International Society of Arboriculture. Various factors used in the tree value calculations for northern Illinois shall be obtained from the most current edition of the Species Ratings and Appraisal Factors for Illinois prepared by the Illinois Arborist Association.

(1) In the event a tree removal permit is sought in connection with work where no building permit is required, but a right-of-way permit may be required, there shall be no charge for such tree removal permit other than the appraised tree value. There are, however, costs associated with a right-of-way permit in Chapter 19.

(c) *Basis for Tree Removal Permit Approval.* The ~~Public Works Department~~ Village may approve an application for a tree removal permit under one or more of the following circumstances:

- (1) the tree is dead or dying;
- (2) the tree is diseased;
- (3) the tree is damaged or injured to the extent that it is likely to die or become diseased, or that it constitutes a hazard to persons or property;
- (4) removal of the tree is consistent with good forestry practices;
- (5) such other reason as the ~~Village Forester~~ Director of Public Works or his/her designee deems appropriate.

For license requirement of tree removal see § 8-71 of this code. For planting of trees, shrubs, etc., in streets, see § 19-19.

(R.O. 1925, § 207.)

Section 7. Section 24.4. is hereby renumbered to be Section 24.104.

24.4. General Provisions.

Unless authorized by the Village, it shall be unlawful:

(a) For any person or entity to remove any tree on Village owned or maintained land without having obtained a tree removal permit.

(b) For any entity or person to plant, prune, remove, destroy, break, cut, deface, or in any way cause the demise, damage, injure or interfere with any tree, shrub or vegetation in any right-of-way of any street or alley or on any property owned or maintained by the Village, unless authorized by a valid permit. Any unauthorized plantings may be removed at the discretion of the ~~Village Forester~~ Public Works Director or designee.

(c) For any entity or person to deposit, place, store or maintain upon the ground in the right-of-way of any street or alley or on any property owned or maintained by the Village, any stone, cement or other

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material which shall impede free passage of water and air to the roots of the tree within the Critical Root Zone ~~or otherwise cause damage to the tree~~, defined in Section 24-724.106.

(d) For any entity or person owning, maintaining or operating any gas pipes or mains laid beneath the surface of any parkway in the Village, to permit any leak to occur in such pipes. In the event that a leak exists or occurs in any pipe or main, the person owning or operating such defective pipe or main shall repair the same immediately and stop such leak in a manner so as to prevent a recurrence of the same after receiving notice from the ~~Village Public Works Department of the Village calling the attention of such person to the fact~~ that such leak exists or has occurred. Such person shall, promptly and ~~in any event~~ within five (5) days after the receipt of such notice, stop such leak in a manner so as to prevent a recurrence thereof.

(e) For any entity or person to attach any rope, wire, electric wire, insulator or any other electric device for holding electric wire to any tree now or hereafter growing on any property owned or maintained by the Village. Exceptions may include seasonal holiday lights, permanent cable and bracing systems, and lighting protection systems. Every entity or person having any wire charged with electricity shall, whenever practicable, securely fasten the same so that such wire shall not come in contact with any tree in any street or alley in the Village. When it becomes necessary to prune branches of trees in any right of way of any street or alley or any property owned or maintained by the Village for the benefit of any person running wire through such trees, the pruning shall be done consistent with the most currently accepted arboricultural practices at the expense of the person owning the wires.

(f) It shall be unlawful for any person owning or controlling property in the Village to permit the growth of any tree or shrub in such manner as to ~~(1a)~~ obstruct the reflection of street lights, ~~(2b)~~ obstruct the view by motor vehicle operators of any traffic control device within the public right-of-way, ~~(3c)~~ obstruct or interfere with the passage of persons or vehicles on the streets or sidewalks of the Village, or ~~(4d)~~ create a dangerous condition for persons or property on public streets, sidewalks or other public property including, but not limited to, any tree or shrub or part thereof which is likely to fall on or across any public property. For the purposes of this section, "traffic control device" shall include, but not be limited to, any sign, signal, or opticom equipment, ~~placed or maintained by the Village~~ used to regulate, warn or guide traffic. Any person violating this section shall be required to prune or remove any such tree or shrub so that it will not create such an obstruction.

(1) When any person owning or controlling property in the Village fails to prune or remove any tree or shrub which is growing in such manner as to violate Section 24.4104 (f) of this Code, the Village Forester will notify the owner of the property of the violation. If the owner fails to prune or remove such tree or shrub within ten (10) days after receipt of notice, the Village Forester will cause such tree or shrub to be pruned or removed, and any reasonable expense incurred by the Village for the pruning or removal, including any administrative costs incurred as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" to prune or remove the tree or shrub and in billing the owners for the cost, shall be a charge against the owner which may be recovered in an appropriate action at law. In addition to all other remedies provided by law, the Village shall have the right to place a lien on the property on which such tree or shrub was growing for the reasonable cost of the pruning or removal thereof. Such lien shall be superior to all other liens and encumbrances except tax liens. Within one hundred twenty (120) days after such cost is incurred, the Village shall cause to be filed a notice of lien in the office of the Recorder of Deeds of DuPage County. Such notice shall include the following information: (a) a description of the real estate sufficient for identification thereof; (b) the amount of money representing the cost and expense incurred or payable for the pruning or removal, including any administrative costs incurred in causing the pruning or removal and in billing the owner for the cost; (c) the date or dates which such cost and expense was incurred. The Village shall also provide a statement that the amount owed shall accrue interest at ten percent (10%) a year for each year the amount remains unpaid. Upon payment of the cost and expense by the owner of, or persons interested in, said real estate, after the notice of lien has been filed, the Village shall issue a release of such lien, which may be filed of record in said Recorder's office.

(g) For any entity or person to attach any sign, advertisement or notice to any public tree.
(R.O. 1925, § 211.)

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Section 8. Section 24.5. is hereby repealed in its entirety**24.5. Reserved.**

Reserved.

~~(R.O. 1925, § 662; Ord. No. 2748, § 1.)~~**Section 9. Section 24.6. is hereby renumbered to be Section 24.105.****24.6. Infectious Disease Control.**

(a) Infectious, diseased trees declared public nuisance; duty of owner to cut trees.

Any live or dead tree on private property which is infected with an infectious disease, or which harbors vectors that transmit infectious disease (such as insects and other arthropods), is hereby declared to be a public nuisance injurious to the public health and welfare. Infectious disease includes, but is not limited to, Dutch Elm Disease, Elm Yellows, Oak Wilt, or Pine Wilt.

(b) Allowing infested trees to remain prohibited.

It shall be unlawful for any person owning or controlling any lot, tract or parcel of land to knowingly permit any and all trees, infected with infectious disease or vectors that transmit infectious disease, to remain on such property. It shall be the duty of such persons to see that all such trees are properly cut down and removed from the property. The failure to remove and destroy such trees shall constitute a violation of this section, and shall be punishable by fine or penalty in addition to such costs as may be incurred by the Village in enforcing and carrying out the provisions of this chapter.

(c) Inspection for infectious diseased trees.

In the event the Village Forester has reasonable cause to believe, either by virtue of its appearance or otherwise, that any tree located within such Village is or might be infected with infectious disease or is or might harbor vectors that transmit infectious disease, the Village Forester is hereby authorized and directed to enter on and upon any private or public property whereon such tree may be located for the purpose of inspecting such suspected tree, marking or identifying the tree, and removing therefrom samples or portions thereof so that same may be tested to establish whether or not such tree is in fact diseased.

(d) Notice to remove infectious diseased trees.

When any infectious live or **infectious** dead tree is discovered by the Village Forester, the Village Forester will give a written notice, which may be served personally or sent by certified mail, to the person to whom was sent the tax bill for general taxes for the last preceding year on the property. Such notice shall identify the property, by common description, the tree or trees affected.

(e) Removal of infected trees by Village; cost of removal to be lien.

In the event that any such infectious live or **infectious** dead diseased tree is not removed within thirty (30) days from the date of the delivery or sending of such notice, then the Village Forester shall enter upon such property with a licensed tree service and cut down and remove such tree and invoice the property owner(s) for the cost thereof. Within one hundred twenty (120) days thereafter the Village shall file in the Office of the Recorder of Deeds of the County, a notice of lien which shall include the following information: (a) a description of the real estate sufficient for identification thereof; (b) the amount of money representing the cost and expense incurred or payable for the removal, including any administrative costs incurred as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" in causing the removal and in billing the owner for the cost; (c) the date or dates on which such cost and expense was incurred. The Village shall also provide a statement that the amount owed shall accrue interest at ten percent (10%) a year for each year the amount remains unpaid. Upon payment of the cost and expense by the owner of, or persons interested in, said real estate, after the notice of lien has been filed, the Village shall issue a release of such lien, which may be filed of record in said recorder's office. (R.O. 1925, § 210.)

Section 10. Section 24.7. is hereby renumbered to be Section 24.106.

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24.7. Prevention of Injury to Trees-Public Right-of-Way

A. In the erection, alteration or repair of any building or structure, or the construction, installation, alteration or repair of any street, driveway, sidewalk, or utility, trees in the right-of-way or on any Village owned or maintained property shall be protected from damage or removal unless otherwise authorized by a Village permit issued by the Public Works Department pursuant to the provisions of Chapter 19. Suitable protection shall include a six (6) foot high temporary chain link construction fence secured to metal posts driven into the ground which are spaced no further than ten (10) feet apart. Tree crowns and trunks shall not suffer any branch or bark loss. Roots shall be protected from compaction, storage of materials, severing, regrading of the parkway or excavation within the Critical Root Zone. It shall be unlawful for any entity or person to sever roots, compact the soil, regrade the parkway or excavate within the critical root zone of any tree in any right-of-way of any street without a valid permit during the erection, alteration or repair of any building or structure, or the construction, installation, alteration or repair of any street, driveway, sidewalk or utility.

The critical root zone is defined as the minimum volume of roots necessary for maintenance of tree health and stability, and shall be a rectangle around the tree trunk with the minimum dimensions listed in the table below:

Tree diameter 4.5 feet above ground	Width from street to property (minimum -curb to sidewalk)	Length along street (minimum)	Depth
0 - 12.0 inches	10 feet	10 feet	4 feet
12.1 - 24.0 inches	10 feet	20 feet	4 feet
24.1 or more inches	10 feet	30 feet	4 feet

Whenever possible, the entire parkway shall be fenced except where access has been permitted. Any factors that would cause any deviations from the table above shall be noted on the permit issued for work in the area and shall be approved by the Village Forester before the work begins or the permit is issued.

In addition to any fines that may be assessed for violation of this section, the person shall pay to the Village a sum equal to the value or partial value of the tree lost as a result of the violation. The value or partial value of the tree lost shall be as determined by ~~the Village Forester~~ using the most current edition of the Guide for Plant Appraisal prepared by the Council of Tree and Landscape Appraisers, ~~and edited, published and copyrighted by the International Society of Arboriculture. Various factors used in the tree value calculations for northern Illinois shall be obtained from the most current edition of the Species Ratings and Appraisal Factors for Illinois prepared by the Illinois Arborist Association.~~

B. Parkway trees in excess of twenty-four (24) inches in diameter, as identified on the Village's online tree map, shall be subject to the following additional regulations:

1. A permit applicant will be required to attend a meeting to discuss the prevention of injury to trees in the public right-of-way, construction expectations and potential issues which may impact public right-of-way trees.

2. Prior to the issuance of a building permit requiring Demolition/Construction Site Management as defined in Chapter 7, an applicant shall submit a Tree Risk Assessment Qualified Report (TRAQ) for all public right-of-way trees that may be impacted by proposed utility and other right-of-way construction. The TRAQ report shall be completed by a Tree Risk Assessment Qualified Professional and shall take into account utility conflicts and other issues which may affect the tree.

3. When associated with a permit requiring compliance with Section 7.1801, it shall be unlawful for

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any entity or person to trench or auger within a critical root zone prior to an on-site Village inspection and approval.

(R.O. 1925, § 209.)

Section 11. Section 24.8. is hereby renumbered to be Section 24.107.

24.8. Violations.

(1) It shall be unlawful for any person or entity to fail to maintain the fence around the critical root zone, as defined above. Each day during which a violation continues or is permitted shall be construed as a separate and distinct offense.

(2) Any entity or person who injures a public tree shall be held responsible for the costs of repairs, such as pruning or cabling, if the injured tree will not die as a result of such injuries. In cases where the tree has been damaged beyond repair and cannot remain in the public right-of-way, the entity or person responsible for the damage shall remove the tree and stump at their own costs, or if the tree is an immediate hazard, the entity or person shall pay the cost the Village incurs in its removal.

(3) In addition to any fines that may be assessed for violation of this section, the person shall pay a replacement tree fee to the Village in a sum equal to the value or partial value of the tree lost as a result of the violation or replacement of trees as provided below in section (b). The value or partial value of the tree lost shall be as determined by the Village Forester using the most current edition of the Guide for Plant Appraisal prepared by the Council of Tree and Landscape Appraisers, ~~and edited, published and copyrighted by the International Society of Arboriculture. Various factors used in the tree value calculations for northern Illinois shall be obtained from the most current edition of the Species Ratings and Appraisal Factors for Illinois prepared by the Illinois Arborist Association.~~

(4) Whoever violates this Code, in addition to any other fines, or fees, shall be subject to the following provisions:

(a) Fines:

1st Offense	\$500 <u>\$2,000</u>
2nd Offense	\$1,000 <u>\$3,000</u>
3rd and Subsequent Offense	\$2,500 <u>\$5,000</u>

All violations that are committed by the same person or any firm controlled by such person shall be counted, regardless of whether or not the violations occur at the same time. Any finding or plea of guilty or plea of “no contest” upon a citation shall be deemed a violation.

(b) Replacement of each tree unlawfully removed under the following scheme:

Removed 10-12 inch diameter tree*	Replace with 3 trees**
Removed 13-19 inch diameter tree*	Replace with 4 trees**
Removed 20-25 inch diameter tree*	Replace with 5 trees**
Removed 26-29 inch diameter tree*	Replace with 6 trees**
Removed 30-35 inch diameter tree*	Replace with 7 trees**
Removed 36 or greater inch diameter tree*	Replace with 8 trees**

* Trunk size as measured at 4.5 feet above the established ground level.

** All replacement trees shall have a minimum trunk size of four (4) inches in diameter, as measured six (6) inches above the established ground level, upon installation.

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~~In interpreting the above exchange rate, in the event of a fraction of an inch, if a fraction is equal to one-half (1/2) inch or greater, the higher full number shall be used.~~

~~The Village Forester shall approve species of any replacement tree. Any replacement tree shall be guaranteed by the violator for up to eighteen (18) months after planting. In the event a replacement tree dies or is in declining condition, the violator shall make a replacement of that dead or declining tree.~~

~~————(e) Payment into the Village's tree planting fund in lieu of replacement.~~

~~In addition to the fines or fees described in section (a) above, but in lieu of replacement as set forth in section (b), any person or entity who unlawfully removes a tree may shall pay into the Village's tree planting fund the cost for replacement a replacement tree fee at a rate of one hundred dollars (\$100) two hundred seventy-five dollars (\$275) per inch of trunk diameter of the tree that was destroyed or removed.~~

~~(d)~~ In addition to any other applicable provisions, the Village may issue to any entity or person who violates any provision of this chapter an invoice as settlement of any violation. The invoice shall list the specific violations that occurred, the date or dates of a violation, the location of the violation and shall request payment of the invoice within thirty (30) days. In lieu of invoices, bonds issued for the work at a violation site may be forfeited should funds be sufficient to cover the tree values or fines. Upon failure to settle the violation, a complaint shall be filed in the Circuit Court for the damage and violation.
(R.O. 1925, § 208.)

Section 12. Section 24.9. is hereby renumbered to be Section 24.108.

24.9. Appeal.

Any applicant for a permit who received a notice of denial may file a written appeal with the Village Manager within ten (10) business days upon receipt of the decision. The written appeal shall set forth the reasons why the applicant believes the decision to deny the license should be reversed. The Village Manager shall respond to the appeal within fourteen (14) days, either affirming or reversing the decision to deny the permit. The decision of the Village Manager shall be the final administrative action of the Village with respect to the permit or application and shall be subject to the immediate appeal by the permittees or applicant to the Circuit Court. Such appeal to the Circuit Court shall be filed not later than thirty-five (35) days following receipt of the Village Manager's decision. Failure to timely file such appeal as provided herein shall render the Village Manager's decision final. (R.O. 1925, § 212.)

Section 13. Section 24.1000NOTE. is hereby repealed in its entirety

24.1000NOTE. Notes to Chapter 24.

Notes to Chapter 24.

———— For state law as to power of Village to plant trees, see Ill. Rev. Stat., ch. 24, § 11-72-1.

———— For license requirement of tree removal see § 8-71 of this code. For planting of trees, shrubs, etc., in streets, see § 19-19.

Section 14. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 15. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

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Mayor

Passed:

Published:

Attest:

Village Clerk