



To: Public Works and Environmental Concerns Committee

From: Eric Hendrickson, Forestry & Urban Landscape Supervisor

Through: Carl Goldsmith, Director of Public Works

Date: 5/15/23

RE: Proposed Tree Ordinance Changes

On December 8, 2022, the Village of Lombard learned that newly planted trees in the Village's rights-of-way could be enrolled in a carbon crediting program through the Chicago Region Trees Initiative. As staff gathered additional information regarding this program, it was discovered that language within the Village's ordinance precluded us from participating in the program. The specific issue was that the ordinance uses the term "shall" in Chapter 99.22 regarding the planting of trees after tree removal. This language creates a requirement for the planting of replacement and cost share trees. The carbon crediting program prohibits the enrollment of trees which are planted due to an ordinance requirement.

In consultation with the program coordinators, staff determined that changing the language from "shall" to "may" would be sufficient to permit the enrollment of replacement and cost share trees into the program. Staff took this opportunity to perform a more thorough examination of the ordinance and recommends the following additional changes.

- 99.01 Eliminated definition of Emerald Ash Borer
Corrected type of pesticide license required to be held by Forestry Technicians
Addition of definitions of terms for new terms used in ordinance
- 99.02 Struck references to Emerald Ash Borer and ash trees
Corrected a typo and an omission
- 99.05 Changed language to reflect current method for determining tree replacement costs.
- 99.10 Changed language to reflect current pruning practices
- 99.22 Changed language to reflect current planting practices, permitting future planted trees to be enrolled in a carbon crediting program
- 99.23 Changed language to reflect current planting practices, permitting future planted trees to be enrolled in a carbon crediting program

The proposed changes to the Village Code will not create any new obligations for the Village. Staff recommends that the Board of Trustees adopt the proposed changes to Chapter 99.



Att: Proposed ordinance changes

County—DuPage County, Illinois.

Dangerous Tree—A standing tree that presents a hazard due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree based upon the ANSI A300 standards.

Diameter at Breast Height—The diameter of the trunk of a tree measured in inches at a point 4.5 feet above the ground line.

Easement—That area of private property in relation to which another entity (public utility/governmental body) has the right to use said area for limited purposes such as access, drainage or utility distribution.

~~*Emerald ash borer (EAB)*—(Agrilus planipennis) A destructive, non-native insect pest that attacks ash trees.~~

Evergreen—Those trees and shrubs, including broad-leaf and conifer evergreens that maintain their leaves year-round.

Forestry Management Plan—A detailed plan developed and approved by the Village under the direction of a certified arborist which protects this valuable infrastructure and outlines strategies for tree planting, selection, care, preservation and removal for the Village.

Forestry Supervisor—A full time Lombard Public Works employee trained and skilled in the theory and practice of municipal arboriculture, and who, if possible, shall hold a college degree or its equivalent in arboriculture, horticulture, urban forestry or another closely related field. This employee shall possess an International Society of Arboriculture's arborist certification and shall maintain the certification during their term of employment. This employee shall also possess an Illinois Department of Agriculture Pesticide Applicator's license.

Forestry Technician—A full time Lombard Public Works employee performing all aspects of tree care. This employee shall possess an International Society of Arboriculture's arborist certification and shall maintain the certification during his/her term of employment. This employee shall also possess an Illinois Department of Agriculture Pesticide Applicator's license.

Hazardous tree—Any tree deemed a public hazard by the village's Forestry Supervisor or Forestry Technician with an ISA Tree Risk Assessment

~~*Qualification*. The hazardous tree may present possible or potential physical damage to person or property or biological danger to adjacent trees through transmittable disease or insect infestation.~~

Infrastructure—The basic underlying framework or features that provide collective services, including but not limited to roads, water and sanitary lines, storm sewers, bioswales and trees.

International Society of Arboriculture (ISA) - The International Society of Arboriculture is an international non-profit organization that promotes the professional practice of arboriculture through research, public awareness campaigns, professional development, promoting the profession and safety in the industry.

Large stature tree—Those trees which attain a mature height of greater than 25 feet and mature width of greater than 30 feet.

Low-growing tree—Those trees that attain a mature height of 25 feet or less. See Small stature tree.

Maintenance—The pruning, mulching, watering, cabling/bracing, fertilization, and pest management practices necessary for plant/tree/shrub growth.

Commented [h1]: As EAB references are removed, definition is unnecessary.

Commented [h2]: Corrected license type required

Commented [h3]: Added TRAQ to prevent determination of hazardous trees without sufficient training.

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Right-of-way—A strip of land over which the village has the right by ownership or dedication to construct a public street, sidewalk, or use for public utilities.

Risk—The likelihood of a conflict or tree failure occurring and affecting a Target and the severity of the associated consequences - personal injury, property damage, or disruption of activities or event and severity of the potential consequences. Determination of Risk is made through a Tree Risk Assessment and Tree Risk Evaluation.

Shrub—A woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground.

Small stature tree—Those trees which attain a mature height of less than 25 feet.

Spacing requirements—All trees planted along the streets shall conform to the spacing requirements stated in subsection 99.04(C) of this Code.

Street tree—See parkway tree.

Tall-growing tree—Those trees that attain a mature height of 45 feet or more.

Target—People, property or activities that could be injured, damaged, or disrupted by a tree.

Topping—The severe cutting back of branches of a tree to a stub, bud, or a lateral branch not large enough to assume the terminal role to such a degree so as to remove the normal canopy and disfigure the tree.

Traffic control device—Any traffic signal, regulatory or warning sign erected in accordance with the manual of traffic control devices.

Tree—Any self-supporting woody plant, together with its root system, trunk and canopy; growing upon the earth usually with a single or multi-stemmed trunk system.

Tree Protection Zone—The area surrounding a tree which is to be delineated by fencing and off limits to construction activity to reduce the negative effects of construction activities as detailed in the Village's construction specifications guide.

Tree Risk Assessment—A systematic process to identify, analyze and evaluate tree risk.

Tree Risk Assessment Qualification (TRAQ)—A voluntary qualification program designed by the International Society of Arboriculture to train and assess candidates in specialized knowledge associated with tree risk assessment. To earn the qualification, eligible candidates must complete a training course, and pass both a comprehensive written assessment and a performance-based assessment. To maintain the qualification, current credential holders must retrain and retest every five years.

Tree Risk Evaluation—The process of comparing the assessed risk against risk criteria to determine the significance of the risk. The evaluation is determined by categorizing the likelihood (probability) of occurrence and the severity of consequences.

Trimming—See pruning.

Urban Forestry Management Plan - see Forestry Management Plan.

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Village—The geographical area lying within the municipal boundaries of the Village, DuPage County, Illinois.

Village Arborist – See Forestry Supervisor

(Ord. No. 8065, § 1, passed 5-26-22)

(Supp. No. 16)

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§ 99.02 Authority of Public Works Director.

- (A) The Public Works Director, or their designee, shall have exclusive jurisdiction and supervision over all trees, shrubs, other plants, and grassy areas planted or growing in public places.
- (B) The Public Works Director, or their designee, shall have the authority and it shall be their duty to plant, trim, treat, preserve, and remove trees, other plants, and grassy areas in public places to maintain an acceptable level of risk within the urban forest managed by the Village and to preserve the beauty of such public places.
- (C) The Public Works Director, or their designee, shall have the authority and may order the trimming, preservation, or removal of trees or plants upon private property when they find a public hazard exists and such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.
- (D) Control of Dutch Elm Disease ~~and Emerald Ash Borer~~.
- (1) Any elm tree infected with Dutch Elm Disease ~~or any ash tree infested with the Emerald Ash Borer~~ as determined by the Village is a public nuisance and shall be removed within 30 days following notification of such infection or infestation. It is unlawful for any person, being the owner of the property whereon such tree is situated, to possess or keep such a tree after the expiration of the 30-day period following notification of the infection on their property.
- (2) Elm trees ~~and ash trees~~ or parts thereof in a dead or dying condition that serve as a breeding place for the Elm Bark Beetle (*Hyaluronans fessipes* ~~species~~ or *Scolytus multistriatus*) ~~or the Emerald Ash Borer (*Agrius planipennis fenniae*)~~ are a public nuisance and it is unlawful for the person owning such property whereon the same is situated to possess or keep same in such condition more than 30 days following notification of the condition on their property.
- (3) The Public Works Director, or their designee, to enforce this article, may enter upon private property at all reasonable hours for the purpose of inspecting trees thereon, and may cause to be removed such specimens as are required for the purpose of analysis to determine whether or not the same is infested or infested, and to cause to be removed such diseased trees upon failure of the owner to do so after due notification. Notice shall not be required for the Public Works Director to inspect trees on private property. Due notification for removal of diseased trees shall follow the format and delivery requirements for notice set forth below in Section 99.02(F)(2)(a), (b), (c), (d) and (e).
- (4) It is unlawful for any person, firm, or corporation to prevent the Public Works Director, or their designee, from entering on private property for purposes of carrying out their duties hereunder or to interfere with such Public Works Director, or their designee, in the lawful performance of their duties.
- (5) In accordance with 65 ILCS 5/11-20-12, in cases where the property owner fails to remove the elm tree or elm wood ~~or ash tree~~ as required by this chapter, the Public Works Director or their agents may go upon such property to cut down and remove such nuisance, and the owner shall be assessed the cost of removal. Notice shall be served as set forth below in Section 99.02(F)(2)(a), (b), (c), (d) and (e).

Commented [15]: Removing references to Emerald Ash Borer as the majority of untreated Ash trees have been removed

Commented [16]: Incorrect word (spellcheck substitution error)

6. Any person who performs a removal activity by the authority of the municipality may, in their own name, file a lien and foreclose on that lien in the same manner as a municipality under this Section.
 7. A failure to file a foreclosure action does not, in any way, affect the validity of the lien against the underlying parcel.
 8. Upon payment of the lien cost by the owner of the underlying parcel after notice of lien has been filed, the municipality (or its agent under subsection (f)) shall release the lien, and the release may be filed of record by the owner at their sole expense as in the case of filing notice of lien.
 9. For the purposes of this Section:
 - "Lien cost" means the removal cost and the filing costs for any notice of lien under subsection (b).
 - "Removal activity" means any activity for which a removal cost was incurred.
 - "Removal cost" means a removal cost as defined under Section 11-20-7, 11-20-8, 11-20-12, or 11-20-13.
 - "Underlying parcel" means a parcel of private property upon which a removal activity was performed.
 - "Year" means a 365-day period.
 10. This Section applies only to liens filed after August 14, 2009 (the effective date of Public Act 96-462).
 11. This Section shall not apply to a lien filed pursuant to Section 11-20-15.1.
 - h. In the event that the owner does not remit payment to the Village in the required timeframe, the full expense thereof shall be assessed as a lien against the property in accordance with ILCS 5/11-20-7 and 65 ILCS 5/11-20-15.
 - i. Nothing in this section shall be interpreted to prevent the Village from electing to obtain a lien under the procedures set forth in 65 ILCS 5/11-20-15.1 in the case of an abandoned residential property.
- (3) The Village Arborist is empowered to cause the immediate abatement of any Public Nuisance or Public Hazard provided that the nuisance is determined by the arborist to be immediate threat to any person, property.
- (Ord. No. 8065, § 1, passed 5-26-22)

Commented [h7]: Added

§ 99.05 Injury to trees and shrubs prohibited.

No person shall, without a written permit from the Public Works Director or their designee, in the case of a public tree or shrub do, or cause to be done by others, any of the following acts:

- (A) Secure, fasten, or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub;
- (B) Cut (including the root system), break, injure, mutilate, deface, kill, destroy, or permit any fire to burn where it will injure any trees or shrub;
- (C) Permit any toxic chemical, gas, smoke, salt brine, oil, or other injurious substance to seep, drain, or be emptied upon or about any tree or shrub;
- (D) Erect, alter, repair, or raze any building or structure without placing suitable guard around all nearby public trees or shrubs which may be injured by such operations;
- (E) Knowingly permit any unprotected electric service wire to come in prolonged contact with any public tree or shrub;
- (F) Remove any guard, stake, or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water, and fertilizer;
- (G) Trim or remove any limbs in a manner that does not conform to Section 99.10 of this Code;
- (H) Use of any unnatural pruning techniques (stubbing, dehorning or lopping).

In the event that a public tree or shrub is injured and the Public Works Director or their designee determine that the public tree or shrub should be replaced, the Village shall determine the replacement value of the tree or shrub based upon the Replacement Cost Method established by the Council of Tree and Landscape Appraisers' Guide for Plant Appraisal, appropriate costs using the formula set forth in Section 99.23 (B) of this code. The person responsible for the injury to a public tree or shrub shall be responsible for all costs for the removal and replacement of the public tree.

(Ord. No. 8065, § 1, passed 5-26-22)

Commented [18]: Change to reflect current practice

§ 99.10 Standards.

All street trees shall be pruned in accordance with the Urban Forestry Management Plan, and in compliance with current ANSI A300 and ANSI Z133 standards.

The pruning of street trees will only be accomplished by Village employees, those licensed tree care companies contracted by the Village to perform such work, or a public utility operating under a permit pursuant to Section 99.09 of this Code. All contractors performing tree work for the Village shall meet the Commercial General Liability, Auto Liability, Professional Liability, Workers' Compensation, Statutory Employers Liability and Umbrella Coverage Insurance requirements as stipulated in the corresponding bid/contract documents.

Wherever possible, all street trees will be pruned as follows:

- (A) ~~Raised~~ ~~remove~~ ~~all~~ ~~lower~~ limbs to a minimum height of 14 feet on the roadway and driveway sides of the tree, eight feet over the sidewalk and parkway and balance the overall tree structure.
- (B) Remove ~~all~~ deadwood with a diameter of two inches or greater.
- (C) Remove ~~all~~ dying or diseased limbs.
- (D) Remove limbs that are crossing or rubbing.
- (E) Remove ~~all~~ broken and/or weakly attached limbs.
- (F) Remove ~~all~~ root suckers.
- (G) Remove ~~all~~ water sprouts up to the first major limb.
- (H) Remove ~~all~~ visible girdling roots.
- (I) All final cuts shall be collar cuts made sufficiently close to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub, so that wound closure can readily begin under normal conditions.
- (J) Clean cuts shall be made at all times without leaving any stubs.
- (K) All limbs to be removed shall be cut in such a manner so as to prevent any ripping or tearing of the wood or bark on the parent or remaining stem.
- (L) All limbs to be removed shall be brought to the ground in such a manner as to prevent any damage to real or personal property, publicly or privately owned.
- (M) Proper tools for pruning shall be used for each cut, with the blades of each tool, including hand pruners, pole saws, hand saws, and chain saws being placed on each branch to obtain the proper pruning cut.
- (N) Pruning shall be done in a way that will not to cut, rip, or harm adjacent bark areas.

Commented [191]: Changed terminology to better reflect current practices. Struck the word all as it is unnecessary

§ 99.22 Tree planting.

Tree planting in rights-of-way under the jurisdiction of the Village shall take place in accordance with the following terms and conditions:

(A) Tree replacements based upon village removal.

(1) If a tree within the rights-of-way under the jurisdiction of the Village is removed by the Village, the Village ~~shall~~ **may** plant a tree, subject to sufficient space therefor, per Section 99.04 of this Code, at no cost to the adjacent property owner.

(2) The adjacent property owner will be afforded the opportunity to provide input on the species of tree to be planted, in accordance with Section 99.06 of this Code; however, the Village shall make the final determination of the species, based on the trees available to the Village.

(B) Trees requested by the adjacent property owner.

(1) If an adjacent property owner requests that the Village plant a tree within the rights-of-way under the jurisdiction of the Village, and no tree was previously removed by the Village from the location in question, subject to sufficient space therefor, per Section 99.04 of this Code, the Village ~~will may~~, subject to the availability of a tree, plant a tree at the location in question; provided the adjacent property owner pays a planting fee of \$150.00 per tree, which fee shall be paid to the Village, by the adjacent property owner, prior to the planting of the tree.

(2) The adjacent property owner will be afforded the opportunity to provide input on the species of tree to be planted, in accordance with Section 99.06 of this Code; however, the Village shall make the final determination of the species, based on the trees available to the Village.

(3) Trees planted at the request of the adjacent property owner, within the rights-of-way under the jurisdiction of the Village, shall remain the property of the Village.

(C) If trees are planted by the Village within the rights-of-way under the jurisdiction of the Village, as part of an approved development of the adjacent property, which requires the planting of parkway trees by the developer of said adjacent property pursuant to Chapters 150 and/or 154 of this Code, the adjacent property owner and/or developer of the approved development shall be charged a flat fee of \$350.00 for each tree planted by the Village.

(Ord. No. 8065, § 1, passed 5-26-22)

Commented [h10]: Eliminates the statutory requirement to plant replacement trees. This enables the Village to enroll replacement trees in the Chicago Region Carbon Program

§ 99.23 Tree removal.

(A) Village removed trees.

- (1) Trees located within the rights-of-way under the jurisdiction of the Village shall be removed when removal is considered necessary by the Village's Forestry Supervisor for reasons of tree health and/or public safety. Prior to such removal, notice will be mailed to the resident of the abutting property, stating the reason for the removal. In the event of an emergency, Village staff has the authority to remove any tree located in the rights-of-way under the jurisdiction of the Village without providing the aforementioned notice, when removal is considered necessary for public safety. In regard to any such tree removal:
 - a. All stumps will be ground to a depth of at least 12 inches below existing grade. Stump grindings will be removed, replaced with topsoil and restored with seed.
 - b. Any tree located in the rights-of-way under the jurisdiction of the Village, that is removed, ~~will~~ may be replaced during the next available planting season, provided there is sufficient spacing, per Section 99.04 of this Code, for the planting of a tree, and sufficient funding for planting a replacement tree. The Village may consider planting more than one replacement tree, provided there is sufficient spacing, per Section 99.04 of this Code, and funding to do so.
 - c. There shall be no fee charged to the adjacent property owner for a tree removed by the Village from the rights-of-way under the jurisdiction of the Village.
- (B) Developer/adjacent property owner removed trees.
- (1) The fee for the removal of a tree from the rights-of-way under the jurisdiction of the Village, at the request of either the adjacent property owner or the developer of the adjacent property, where the Village Forestry Supervisor has determined that the tree would not otherwise need to be removed, and the Village consents to the removal, shall be based upon the following formula:
$$[\text{DBH} + 2] \times \$350.00 = \text{Tree Removal Fee}$$
with DBH being the diameter at breast height (DBH) of the tree to be removed, which is the diameter of the tree at four and one-half feet above the ground. Said fee shall be paid to the Village prior to the removal of the tree.
 - (2) For ornamental trees over six inches diameter measured below the first branch union the fee as calculated above shall be reduced by one-half to reflect the smaller mature canopy size of these trees. The following trees shall be classified as ornamental trees: crabapples (Malus spp.), lilacs (Syringa spp.), serviceberries (Amelanchier spp.), hawthorns (Crataegus spp.), pear (Pyrus spp.) and ornamental cherry/plum (Prunus spp.)
- (C) Disputing assessed tree removal fee. Any request for waiver or modification of assessed tree removal fees shall be submitted to the Public Works Director in writing for consideration. The request should include why the fee has been assessed, the dollar amount of the fee assessed, reasons why requestor believes the amount should be modified. The Public Works Director shall have final determination regarding any waiver/modification of assessed fees.