

Ordinance No. 110121-02

**An Ordinance Repealing and Recreating Section 18-177, Tree Preservation Requirements,
of the Municipal Code of the Village of Fontana-on-Geneva Lake.**

The Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin, do ordain as follows:

SECTION 1. Section 18-177 of the Municipal Code of the Village of Fontana-on-Geneva Lake is hereby repealed and recreated in its entirety, to read as follows:

Section 18-177. Tree Preservation Requirements.

(a) *Purpose.* The purpose of this section is to:

- (1) Promote the preservation and planting of trees in order to preserve the Village's character as a naturally wooded community.
- (2) Protect the waters of the State and Geneva Lake.
- (3) Preserve and enhance property values within the Village.
- (4) Generally protect, promote and enhance the quality of life, public health and safety and general welfare of the people in the Village.
- (5) This ordinance Section 18-177 shall not apply to a commercial tree farm or to the management of trees on a golf course.

(b) *Prohibited Tree Removal or Tree Pruning/Trimming.*

- (1) Except as provided in this Section 18-177, it shall be unlawful for any person or property owner to remove a Protected Tree or cause the substantial destruction of a Protected Tree.
- (2) Except as provided in this Section 18-177, no Protected Tree may be pruned or trimmed except in compliance with the most current American National Standards Institute (ANSI) Tree Care Performance Standard. No permit is required for pruning a Protected Tree on private property.
- (3) No Protected Tree may be removed or trimmed that is located on public property, other than by the public property owner.
- (4) No Protected Tree may be removed or trimmed that is located on the property of another unless written consent is first obtained from the property owner and a tree removal permit is obtained pursuant to this Section 18-177.
- (5) No clear cutting of Protected Trees from a property shall be permitted, other than pursuant to Section 18-177(c)(2)c, herein. Clear cutting is defined as the removal or destruction of all, or substantially, Protected Trees on a property.
- (6) No tree topping of a Protected Tree shall be permitted. Tree topping is defined as an inappropriate pruning technique to remove the top portion of the tree's main leader(s), resulting in an overall reduction in the tree's height, size and potential health or life expectancy.

(c) *Permit required for removal of Protected Trees.*

- (1) No Protected Tree may be removed without first obtaining a tree removal permit pursuant to this Section 18-177.
- (2) Tree removal permits authorizing the removal of Protected Trees may be issued by the Village of Fontana in accordance with at least one the following terms and conditions:
 - a. The Protected Tree is dead, dying or diseased, as established by an Authorized Arborist; or
 - b. The Protected Tree is damaged or injured to the extent that it is likely to die or become hazardous to persons or property, as established by an Authorized Arborist; or
 - c. That the Protected Tree(s) proposed to be removed is/are the minimum number necessary so as to undertake a permitted or approved conditional use on private property, and including Protected Tree removal from an additional ten foot area surrounding the principle structure on the property; or
 - d. That the Protected Tree is an “invasive species” tree. An “invasive species” tree shall mean those species so designated on the most recent Wisconsin Department of Natural Resources published list of invasive tree species.
- (3) In order to obtain a tree removal permit, the applicant shall submit the following information:
 - a. A completed application and cost recovery form as supplied by the Village. Said application shall be signed by the property owner and the person intended to remove the tree and shall include a signed statement by an Authorized Arborist who shall address the tree removal criteria set forth in Section 18-177(c)(1)(2). Said application shall include a statement of financial responsibility as to any damage or injury caused by the proposed tree removal.
 - b. A tree survey prepared by an Authorized Arborist indicating the location, size and species of all Protected Trees on the property or within 100 feet of the proposed principal use or approved conditional use, whichever is smaller. All Protected Trees proposed for removal shall be specifically labeled on said tree survey, and photographs of each Protected Tree proposed for removal shall be included.
 - c. An explanation of the Tree Protection measures proposed so as to minimize damage to trees that are to remain on the property (see 18-177(g), herein).
 - d. The location, shape and arrangement of all proposed buildings, walls, driveways, sidewalks or any other improvements or structures to be constructed on the property, including the area of grading or disturbance.
 - e. Existing and proposed private and public utility services.
 - f. Existing and proposed elevations and contour lines at one-foot intervals, zoning setbacks, zoning guard requirements and all other easements or encumbrances of record.
 - g. Such other information as may be requested by the Village.

(d) *Protected Trees.* The Village hereby declares that the following are Protected Trees for the purpose of this Natural Resource Conservation Ordinance:

- (1) Trees of any size located on any Village-owned property, including any public right-of-way or terrace located in the right-of-way.
 - (2) Trees of any size which are planted as part of a Village-approved zoning landscape plan, such as for a conditional use permit, a planned development or other similar approval.
 - (3) Any species of trees measuring six inches or more in DBH (“Diameter at Breast Height”).
- (e) *Authorized Arborist.* The Village shall maintain a publicly available list of Village of Fontana Authorized Arborists for purposes of providing the certification called for by Section 18-177(c)(2). The Village may also utilize the paid services of a Village-hired arborist or other Village professionals for purposes of evaluating applications, with the cost thereof to be reimbursed by the applicant pursuant to the Village’s cost recovery ordinance.
- (f) *Exceptions.*
- (1) A tree removal permit may be issued after removal only in a situation where a Protected Tree must be immediately removed outside of normal open hours for the Village Hall due to an imminent danger to the health, safety or welfare of property or persons due to the tree’s dangerous condition. In such a removal, the applicant shall preserve photographs of the tree prior to removal and other evidence of the dangerous condition of the tree and shall apply for a tree removal permit and receive a permit as soon as practical following the tree’s removal.
 - (2) No tree removal permit shall be required for trees located on a commercial farm or for the management of trees on a golf course. Said exception shall also act as an exception to the tree replacement requirements set forth at Section 18-177(h).
- (g) *Tree Protection during construction or land disturbance.* Where any construction activity, land disturbance or tree removal is taking place on any property, the following tree preservation methods and standards must be followed and must be shown in advance on any application for tree removal:
- (1) No construction activity, movement or placement of equipment or vehicles, placement of material or spoils or excess soil shall be placed inside the root zone and drip line of any Protected Tree.
 - (2) Temporary proactive fencing shall be installed outside of each Protected Tree’s root zone and drip line. Said fencing shall remain in place during the entire time of construction, land disturbance or tree removal.
 - (3) Such other measures as may be required by the Village of Fontana depending on unique or unusual property conditions, tree locations or proposed construction activity or land disturbance.
- (h) *Tree replacement requirements.* Any Protected Tree that is removed shall be replaced with a replacement tree. The Village shall maintain and provide a publicly available list of authorized replacement trees. A replacement tree may not be an invasive species tree.
- (1) The minimum size of any replacement tree shall be two-inch DBH. The number of replacement trees is determined on the following basis:
 - a. For a removed tree with a DBH of one to 10 inches: 1 replacement tree.

- b. For a removed tree with a DBH of 10 to 20 inches: 2 replacement trees.
 - c. For a removed tree with a DBH of 20 to 30 inches: 3 replacement trees.
 - d. For a removed tree with a DBH of 30 inches or larger: 4 replacement trees.
- (2) If the Authorized Arborist determines that it would not be consistent with the best practices to plant replacement trees on the parcel from which the trees were removed, then an amount of money equal to the value of the replacement trees shall be deposited into the Village of Fontana's Tree Bank Replacement Fund. This fund may be only used by the Village for the planting of trees on public property and costs associated therewith.
- (i) *Penalty.* In addition to those penalties provided by the Village ordinances and this Chapter 18, any person who removes or substantially destroys a Protected Tree without a tree removal permit shall also be fined a minimum of \$500.00 per inch of tree DBH. In the absence of proof to the contrary, any such tree illegally removed shall be presumed to be at least four inches DBH, unless a larger size can be established. The payment of a fine shall not relieve any person found to have violated this section from the tree replacement requirement set forth herein.

SECTION 2. Section 18-13. Definitions. is hereby amended to eliminate the definition for "Clear Cutting (activity)" and "Clear Cutting (land use)".

SECTION 3. Section 18-27.(c)(24) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 4. Section 18-28.(c)(5) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 5. Section 18-29.(c)(3) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 6. Section 18-30.(c)(3) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 7. Section 18-31.(c)(3) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 8. Section 18-32.(c)(3) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 9. Section 18-33.(c)(3) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 10. Section 18-34.(c)(8) is hereby repealed in its entirety and replaced with the word "reserved".

SECTION 11. Section 18-35.(c)(6) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 12. Section 18-36.(c)(9) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 13. Section 18-37.(c)(10) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 14. Section 18-38.(c)(3) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 15. Section 18-39.(c)(15) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 16. Section 18-41.(c)(8) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 17. Section 18-42.(c)(18) is hereby repealed in its entirety and replaced with the word “reserved”.

SECTION 18. Section 18-63.(e) is hereby deleted in its entirety.


SECTION 19. The Table of Land Use set forth in Section 18-54 shall be amended to reflect the terms of this Ordinance as to “clear cutting”.

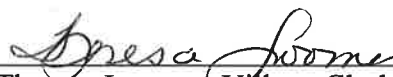
SECTION 20. Effective Date.

This Ordinance shall be in full force and effect upon its passage, approval and publication as required by law.

PASSED AND ADOPTED by the Village Board of the Village of Fontana-on-Lake Geneva, Walworth County, Wisconsin, this 1st day of November, 2021.

VILLAGE BOARD OF THE VILLAGE OF
FONTANA-ON-GENEVA LAKE

By: 
Patrick Kenny, Village President

Attest: 
Theresa Loomer, Village Clerk