

Ordinance No. 07-06-09-01
An Ordinance Repealing and Recreating Section 18-28 (Natural Resource Conservation Ordinance) of the Village of Fontana on Geneva Lake Municipal Code

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

Section I. Section 18.28 of the municipal code for the Village of Fontana on Geneva Lake Municipal Code is hereby repealed and recreated as follows:

Sec. 18-28. Natural resource conservation ordinance.

Definitions of various terms in this ordinance are referred to in subsection 18-17 of the Village of Fontana-on-Geneva Lake Municipal Code.

A. *Purpose.* The purpose of this section is to:

1. Promote the preservation and planting of trees and beneficial natural vegetation in order to preserve the village's character as a naturally wooded community;
2. Preserve and encourage the reintroduction of trees which are native to, and naturally dominant in, the Village's original environment, such as oaks and maples;
3. Alleviate the negative visual, economic and environmental impact of indiscriminate or excessive removal, clear cutting and destruction of larger, more mature trees and their canopy, while not unduly interfering with the right of village property owners to appropriately remove trees on private property;
4. Assist in the control, drainage and restoration of land disturbed;
5. Aid in the stabilization of soil by the prevention of erosion and sedimentation;
6. Reduce the negative impact of storm water runoff and the cost associated therewith;
7. Protect the waters of the state and Geneva Lake;
8. Encourage environmentally responsible development;
9. Preserve and enhance property values within the village;
10. Generally protect, promote and enhance the quality of life, public health and safety and general welfare of the people in the village.

B. *Prohibited acts.*

1. *Tree removal control.* Except as provided herein, no person shall cut down, remove, damage or destroy, or authorize the cutting down, removal, damage or destruction of any protected tree as defined herein, without having first obtained a Tree Removal ~~and Land Disturbance~~ Permit as provided herein.
2. *Clear cut prohibition.* The clear cutting of any lot within the village is prohibited unless a conditional use permit has been obtained, or granted through planned development zoning.
3. *Topping prohibition.* The topping of any tree is prohibited.

4. Attachment prohibition. No attachments shall be made to any protected tree.

C. *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.
2. Trees of any size which are planted or retained as part of a landscape plan approved by the Village for any Planned Development (GDP & PIP), Conditional Use Permit, Site Plan or Land Division (Plat or CSM), which is a component of a general development plan or precise implementation plan in any planned development zoning district, or as shown on any plat, certified survey map, site plan, grading permit, building permit or landscape plan otherwise approved by the village for any other form of development.
3. Any species of tree not defined herein as a "nuisance tree" and measuring tree eight inches or more in DBH. A nuisance tree is any tree that is diseased, dead, injured or in danger of falling to the extent that said tree's continued presence threatens the immediate health or safety of nearby persons or property.
4. ~~Trees of any size located within the shore yard setback area pursuant to section 18-33 of the Municipal Code. Viable "invasive species" trees which measure eight inches or more in DBH. Although these types of trees are not considered a native or desirable species, the Village of Fontana has determined that these trees contribute to the overall tree canopy, and for purposes of obtaining a tree removal permit, shall be considered a protected tree. Invasive tree species are as delineated on the Wisconsin Department of Natural Resources published list of invasive tree species.~~
5. ~~Trees of any size located within the shore yard setback area pursuant to section 18-33 of the Municipal Code. Trees of any size designated as a landmark tree. Such designation shall be made by the Park Commission and, in addition to having notified the owner of any tree with such designation, shall obtain the property owner's written consent for such designation, and keep an up-to-date record of all designated landmark trees for the public's knowledge.~~

D. *Permitted acts.* With the exception of tree farms and nurseries which have been acknowledged in writing by Village of Fontana Zoning Staff as the principal use on the subject property and therefore exempt from the provisions of this Ordinance, trees may be removed only with the issuance of a tree-removal and land-disturbance permit. The owner of fee simple title to any lot may apply for a Tree Removal and Land Disturbance Permit pursuant to the following requirements:

1. *Application for tree-removal and land-disturbance permit.*
Application for a Tree Removal and Land Disturbance Permit shall be made in narrative form within a letter and shall be accompanied by the following documentation:
 - a. A complete and signed narrative which includes, among other things, the reason for the proposed tree removal; and the following:
 - 1) Name and address of the property owner.
 - 2) Name and address of applicant if other than the owner accompanied by a written, signed letter of consent from the property owner.
 - 3) A description by lot and block number of the premises for which the permit is sought.
 - 4) A sketch depicting lot size with approximate location, size in DBH and type of tree(s) to be removed or destroyed and approximate location, caliper and type of tree(s) to be planted in replacement of those removed or destroyed. An alternative or supplement to a sketch depicting the trees, may be accepted as approved by the zoning administrator.
 - 5) The following may also be required as determined by the zoning administrator if tree removal or destruction is pursuant to any project requiring a grading permit, building permit or landscaping plan:
 - a) A certified tree survey depicting location, species and DBH of all trees on the property with a DBH above eight inches prepared by a certified arborist.
 - b) A tree preservation plan prepared by a certified arborist designating trees to remain and trees to be removed, necessary tree protection zones and a listing of all mitigation procedures needed including, but not limited to, pruning, mulching and fertilizing. All trees on adjacent properties with drip lines over the construction site or other areas to be disturbed or compacted by vehicle maneuvering, materials staging, equipment use, dumpster and other waste disposal, parking and soil stockpiling must also be protected from construction damage with appropriate protection zones as established in subsection d), below. As part of this tree preservation plan, all trees over eight inches in DBH proposed for removal,

- or otherwise not intended for protection, shall be clearly identified with a ribbon tied around the tree at breast height as of the date of plan submittal to the village.
 - c) An engineered site plan including, but not limited to, the building footprint, driveways, patios, decks, swimming pools and utility trenches.
 - d) Construction site management plan which depicts tree protection areas, materials staging areas, equipment use areas, dumpster and other waste disposal locations, parking and soil stockpile locations.
 - e) Grading plan.
 - b. An application filing fee in an amount as may be established by village board resolution from time to time.
- 2. Upon receipt of an application, the enforcement officer may visit the location and inspect the land and trees which are the subject of the application in order to determine the effect of removal upon:
 - a. The drainage and stormwater runoff and other physical conditions of the land, adjacent properties and the roadway.
 - b. The stability of the soil of the subject land with particular concern for whether erosion will be created.
 - c. Growth and development of the remaining trees on the subject land and adjacent property.
 - d. Loss of tree species.
 - e. Effect of tree removal on neighboring property and the neighborhood, in general.
- 3. *Enforcement officer.* If the application requested is made by a tree specialist, or accompanied by a certification by a tree specialist, the enforcement officer will not be required to visit and inspect the location if it is deemed the information in the application is accurate, as to the reasons for the requested removal. The enforcement officer shall, within ten business days of the receipt of a completed application, grant or deny the requested permit. The failure of the enforcement officer to act upon an application for the removal of a tree(s) within ten business days of receipt of same shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the ten-day period has been agreed upon between the applicant and the enforcement officer before the period expires.
- 4. *Village zoning administrator.* The village zoning administrator, as part of the review of an application for a tree-removal ~~and land-~~

disturbance permit, or at any other time, may obtain an opinion and technical/professional guidance from a certified arborist with the cost thereof to be recovered from the applicant by the village.

5. *Limited duration to be specified in permit.* Any Tree Removal ~~and Land Disturbance~~ Permit pursuant to this natural resource conservation ordinance shall be of a limited duration specified in the permit. Any Tree Removal ~~and Land Disturbance~~ Permit issued by the village is to be prominently displayed prior to removal and throughout the permitted process. Within three business days after removal of a tree pursuant to a tree-removal ~~and land disturbance~~ permit, notice of completion shall be given to the village zoning administrator. A Tree Removal ~~and Land Disturbance~~ Permit may be issued subject to a stated list of conditions designed to protect trees and advance the purpose of this natural resource conservation ordinance.
6. *Site inspections.* Application for a Tree Removal ~~and Land Disturbance~~ Permit constitutes consent by the property owner for the enforcement officer to conduct site inspections in furtherance of this natural resource conservation ordinance at such times and in such manner as deemed necessary by the village.
7. *Criteria for issuance of tree-removal ~~and land disturbance~~ permit.* In determining if a tree-permit application shall be approved and a Tree Removal ~~and Land Disturbance~~ Permit shall be issued, the village zoning administrator shall make the following findings:
 - a. That the applicant has made every reasonable effort to incorporate existing trees into applicant's plan for use of the lot and has taken all reasonable steps to minimize the number of trees to be removed; and
 - b. That the trees proposed to be removed are the minimum number necessary so as to accomplish the applicant's stated purpose for the tree removal; and
 - c. That the condition of the trees proposed for removal with respect to disease, danger of falling, proximity to existing structures and high pedestrian and/or vehicular traffic areas or interference with existing utility services cannot be controlled or remedied through reasonable preservation or preventative procedures and practices; and
 - d. That removal of the trees is necessary to enable the reasonable and conforming use of the lot which would otherwise be prevented by the presence of the trees sought for removal; and
 - e. That removal will be carried out in a way to limit damage to other protected trees; [and]

f. That removal of the trees does not exceed the maximum allowed removal or destruction of 30 percent or greater of the trees having a DBH of eight inches or more on a village lot as determined by the village zoning administrator based on historic air photos, tree inventories, SEWRPC determinations and other appropriate records. Removal of more than 30 percent of trees having a DBH of eight inches or more may be permitted if a conditional use permit has been obtained, or granted through planned development zoning. Trees located within a proposed new building footprint as described on any application for a building permit, shall be exempted from this computation, but shall remain subject to all other requirements of this Natural Resource Conservation Ordinance.

g. *Exceptions.*

1. ~~A waiver of fee(s) may be granted~~ A tree-removal permit is not required for the following:

- a) All licensed or governmental tree nurseries which have been acknowledged in writing by Village of Fontana zoning staff as the principal use on the subject property, shall be exempt from the terms and provisions of this section in relation only to those trees which are planted and grown for resale to the general public in the ordinary course of business or those trees which are planted and grown for a public purpose.
- b) Removal of any nuisance tree that is diseased, dead, injured or in danger of falling to the extent that said tree's continued presence threatens the immediate health or safety of nearby persons or property; provided, however, that the person removing such a nuisance tree preserves evidence and documentation as to the removed nuisance tree, such as a documented inspection by the Building & Zoning Department, or photos clearly depicting the presence of the tree's disease, injury, death or safety hazard and applies for a Tree Removal and Land Disturbance Permit within three business days after the removal which shall be produced to the Village upon request. A nuisance tree is any tree that is diseased, dead, injured or in danger of falling to the extent that said tree's continued presence threatens the immediate health or safety of nearby persons or property. Any tree suspected of having oak wilt or emerald ash bore must be evaluated professionally

and removed according to current ANSI standards if found to be diseased.

- c) Removal of any tree during emergency conditions such as a tornado or other natural disasters of similar scope by a public or private utility, the village or any other municipality having jurisdiction in order to prevent an interruption of public or private service or other public services or to restore interrupted service.
- d) Removal of trees by the village ~~from village-owned properties, or~~ from the right-of-way for roads or streets maintained by the village for public utilities maintained by the village.
- e) Removal of ~~nuisance~~ invasive tree species that have been designated as nuisance trees. Invasive tree species are as delineated on the Wisconsin Department of Natural Resources published list of invasive tree species, or weed trees, unless they have been designated as landmark trees. The species of such trees includes, but is not limited to, the following:

- 1) ~~Box elder,~~
- 2) ~~Buckthorn,~~
- 3) ~~Cottonwood,~~
- 4) ~~Silver Maple,~~
- 5) ~~Willow,~~
- 6) ~~Tree of Heaven,~~
- 7) ~~Black Cherry,~~
- 8) ~~Russian Olive,~~
- 9) ~~Honeysuckle.~~

- 2) Proposed removal of trees designated as landmark trees, regardless of their location, species, or health, and proposed removal of trees by the village from village owned properties (other than from road right-of-ways) the following shall be submitted to and approved by the park commission. Submittal requirements shall be as established by the park commission.:
 - a) ~~Proposed removal of trees by the village from village-owned properties, or from the right of way for roads or streets maintained by the village for public utilities maintained by the village.~~
 - b) ~~Proposed removal of trees designated as landmark trees, regardless of their location.~~

8. *Tree protection during development.* Any construction or land-disturbing construction activity on a lot, whether requiring a building permit or not, shall only be undertaken in such a way as to preserve protected trees. The following steps shall be followed in all construction or land disturbing construction activities and may additionally be imposed as conditions with regard to any Tree Removal and Land Disturbance Permit or building permit issued by the village:

- a. Prior to beginning any site preparation, land-disturbance construction activity or any construction, all areas proposed for such activities shall be clearly marked out on the subject property. ~~This "disturbance boundary line" shall be maintained for clear visibility throughout the time period of site disturbance activities.~~ The location of this line shall be inspected and certified by the zoning administrator in writing as consistent with the approved development permit(s) and associated conditions, prior to any site disruption activities. ~~At minimum, this clearly marked disturbance boundary line and required protective barriers shall be placed at the drip line around all protected trees which are not to be removed or otherwise subject to damage. Said protective barriers shall be a minimum of two feet high and shall be kept in place directly upon the disturbance boundary line continuously by the property owner, permit applicant and site workers until construction or land disturbing construction activity is complete. Snow fencing or other similarly visible continuous barrier fencing is required.~~
- b. The grade of land located within the drip line shall not be raised or lowered more than one inch.
- c. No soil stockpiling, storage of materials, discharge of contaminants into the soil, movement of construction equipment or vehicles shall be permitted within the drip line of any protected tree not to be removed.
- d. No attachments shall be made to any protected trees which are not subject to be removed.
- e. Any protected tree which dies or is severely damaged during construction or land disturbing construction activities or is found to be in a state of unnatural decline within a three-year period after said activities cease shall be subject to the tree mitigation obligation set forth at subsection (d)(9).

E. *Tree mitigation policy.*

1. Each protected tree removed in accordance with this natural resource conservation ordinance and in accordance with a

valid Tree Removal and Land Disturbance Permit shall be replaced on the same lot within three months or the beginning of the next planting season, whichever is sooner. Each replacement tree shall measure a minimum of two inches in caliper. Within three business days after planting of each replacement tree pursuant to this subsection, notice of completion shall be given to the village zoning administrator.

If replacement on same lot is not feasible, as determined by the zoning administrator, appeal to the Tree Board may be made to request approval of replacement on another lot within the Village, which lot is owned by the person to whom the tree removal and land disturbance permit is issued. any of the following alternative requirements may be substituted:

a) Replace some of the required trees on the same lot, satisfying the remainder required replacements by paying the appropriate tree removal replacement fee.

b) Replace some or all of the required trees on another lot located with this Village, which is owned by the person to whom the tree removal is issued, and satisfying the remainder required replacements by paying the appropriate tree removal replacement fee.

c) Replace some or all of the required trees on another lot owned by the Village as recommended by the Park Commission, and authorized by the Village Board, and satisfying the remainder required replacements by paying the appropriate tree removal replacement fee.

2. For purposes of this mitigation, the person to whom the tree removal and land disturbance permit is issued or any successor/owner shall be responsible for maintaining the health of any replacement tree for three years from planting. Should any replacement tree die or be in a state of unnatural decline at any time during said three-year period, the permit holder shall be required to replace the tree with a tree of similar size within three months or the beginning of the next planting season of said determination. Thereafter the three-year maintenance period for said replacement tree shall begin anew and so on thereafter with subsequently replaced trees. At any time the village zoning administer

may require the permit holder to obtain a bond or a letter of credit on terms acceptable to the village for 150 percent of the estimated cost of a replacement tree with a minimum not less than two inches in caliper so as to secure continuing performance of this monitoring and tree survival obligation.

3. ~~In the event a permit holder is able to demonstrate that replacement is not a viable alternative~~ As an alternative to replanting on the same lot, the applicant shall may choose to pay a tree removal replacement fee prior to removal in the amount as may be established by village board resolution from time to time. Said tree removal replacement fee shall be held by the village in a segregated tree reforestation fund to be used as determined by the village park commission or the village tree board for such purposes as the village park commission or village tree board deem appropriate in furtherance of the village's commitment to maintain the village's tree canopy.
4. Persons providing ~~written or photographic~~ documentation that a tree has been planted on the same lot within the previous five years shall be exempt and not required to replace the removed tree.
5. Invasive species shall not be considered a suitable replacement tree.

F. Duty of property owners to maintain trees. It shall be the responsibility of every property owner or occupant to maintain trees on the owner's property in a safe and healthy manner, and to keep trees properly pruned and trimmed so as to avoid hazards to persons, property and other vegetation.

G. Abatement. Upon finding that any tree or portion thereof is in such condition as to constitute a nuisance, or that imminent danger exists to persons, property or other valuable vegetation, the Village of Fontana shall, by order served on the owner, direct the property owner to remove, alter or treat the tree in such a manner as to cause abatement of the condition. Failure to comply shall result in the Village taking action at the owner's expense, in addition to seeking any penalty or penalties applicable in state and local codes and ordinances.

~~F. H. Penalties.~~ Any person violating any provision of this natural resource conservation ordinance shall be subject to those penalties described in section 1-11 of the Village of Fontana-on-Geneva Lake Municipal Code. Any person who removes a protected tree ~~that has not been designated a "nuisance tree" under Subsection D. 7. g. 1) e) of this ordinance,~~ without a Tree Removal and Land Disturbance Permit as provided herein shall, in addition to any other penalty, be required to forfeit \$100.00 per inch over eight inches DBH (as measured at breast height), but not less than \$500.00 per tree, to be held by the village in a

segregated tree reforestation fund, and to install replacement tree(s) in accordance with subsection 18-28(d)(9) of the Village of Fontana-on-Geneva Lake Municipal Code.

~~Any person who removes a protected tree that is designated a "nuisance tree" under subsection E.(1) of this ordinance, without a Tree Removal and Land Disturbance Permit as provided herein shall, in addition to any other penalty, be required to forfeit \$100.00 for each such tree removed, to be held by the village in a segregated tree reforestation fund, and to install replacement tree(s) in accordance with subsection 18-28.E.(1) of the Village of Fontana on Geneva Lake Municipal Code.~~

G. *Appeals.* Any person desiring to appeal a decision for any reason shall do so in writing to the village park commission ~~or the village tree board.~~ The Park Commission shall review the requested appeal and make recommendation to the Village Board for final decision.

(Ord. of 2-7-2000, § 18.0311; Ord. No. 060605-01, § I, 6-6-2005; Ord. No. 02-07-06-02, § 1, 2-7-2006)

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 Geneva Lake, Walworth County, WI this 6th day of July, 2009.

Village of Fontana on Geneva Lake

By: 

Arvid Petersen, President

Attest: 

Dennis Martin, Clerk

