

DATE: July 14, 2023

TO: Plan Commission & Zoning Board of Appeals

FROM: Zach Ewoldt, Planner

SUBJECT: Amendment to Title 11 of the City Code: Subdivision Regulations, Creating Chapter 9
Tree Preservation
City of Batavia, Applicant

Background & Staff Analysis: The City of Batavia has not adopted a Tree Preservation Ordinance. With many of the surrounding communities requiring some level of tree preservation, staff has determined it would be appropriate to add these regulations to the City Code. Historically, City staff has relied on requesting applicants to protect specific trees and replace trees if removed. This process at times has proven to be difficult and has resulted in trees being replaced at a lower rate than proposed in the draft Tree Preservation Ordinance, or trees not preserved at all. With the City continuing to grow, several large undeveloped properties remain. These properties would provide opportunities to apply the draft Tree Preservation Ordinance. Staff is proposing to implement the proposed ordinance as a new chapter in Title 11 Subdivision Regulations. These new requirements would apply towards the development or redevelopment of any property, with the exclusion of existing single family or two-family dwellings. The intention of staff is to implement the proposed regulations on a smaller scale focusing on new development and redevelopments initially, then revisit the code after five (5) years of implementation to determine if expanding to other existing properties is appropriate and feasible. Below outlines several areas of the proposed Tree Preservation Ordinance in more detail.

Review Process and Approval: Under the Zoning Code all new development or redevelopment of properties require Design Review. Through that process, representatives from Public Works, Engineering, Zoning, Building and Administration participate in the review. The Planning and Zoning Officer through this process coordinates the project through the public meeting and public hearing process. Due to the role of the Planning and Zoning officer, staff is proposing that the approval authority within the Tree Preservation Ordinance be placed under that position. Any approval by the Planning and Zoning Officer would be supported by the review process by all development review staff, including the City Arborist.

Government Agency Relief: Staff is proposing to allow government agencies, or their contractors have tree replacement reduced or waived by the City Council through resolution. This would apply to the school district, library, township, county, and forest preserve if they were to pursue the development or redevelopment of a property they own. The Council shall consider the Criteria for Removal of Mature Trees when reviewing a proposed resolution.

Criteria for Removal of Mature Trees: Staff is proposing to require applicants to state the reason for removal of any tree over 6 inches in caliper. The approved reasoning for removal shall be one of the following:

- a. The tree is dead, dying, diseased, or is listed on the undesirable tree list or a threat to public health or safety.
- b. The tree interferes with the provision of public services or is a hazard to traffic.
- c. The preservation of an existing tree would impede the growth and health of other trees within the development.

- d. The location of the tree prevents development or redevelopment that cannot be designed to protect the tree. The following will be considered when applying this criteria:
 - i. The preservation of an existing tree is in conflict with a requirement of Title 10, Zoning Code Regulations.
 - ii. The preservation of an existing tree would impede a development's ability to comply with the Kane County Stormwater Ordinance.
 - iii. The preservation of an existing tree impedes a development's ability to grade a site.

The intention of this section is to guide developments to consider the preservation of existing trees, while continuing to promote healthy development within the City of Batavia. Staff feels that it would not be appropriate to create overly restrictive criteria that would hinder new development from occurring. With that in consideration, staff proposes to exclude trees less than 6 inches in caliper from being included on a tree preservation plan and replacement.

Replacement Standards & Rates: Staff has developed several standards for replacement of trees that are removed. The location of a replacement tree should to the greatest extent possible be planted on the zoning lot being developed. If that is not possible, staff proposes that the Planning and Zoning Officer determine a suitable location (on public property) or accept a fee-in-lieu. Additionally, staff proposes to not count a tree required to be planted by the Zoning Code or a required parkway tree as a replacement tree. Staff is under the opinion that the replacement of an existing tree on a lot must be in addition to what is otherwise required by the code for a development. Staff has prepared three tables outlining the number of trees required for replacement for trees approved to be removed. The first table currently requires the replacement of any tree listed on the undesirable tree list at a rate of one (1) tree for every one (1) tree removed. The second table proposes a replacement rate that varies with the caliper size of the tree removed. An example would be a tree 6"-12" shall be replaced with two (2) trees, while a tree 36" or greater shall be replaced with 10 trees. The third table is drafted to consider heritage trees, and requires a higher frequency of replacement to discourage the removal of heritage trees as defined in this section of the Ordinance. The rate of which a tree should be replaced at takes into consideration the overall impact a tree of a certain size has on the environment. The requirement to replace a larger tree with several trees is to have a more immediate benefit. Staff is seeking feedback from the Plan Commission regarding the proposed rate of replacement for all three tables.

Fee-in-Lieu: Staff recognizes that the preservation and replacement of all required trees on a property is not possible at times. In the event a development cannot accommodate the required replacement trees, the applicant shall pay the City \$400 for each required replacement tree not planted on the property. The funds generated from the Fee-in-Lieu can be utilized to plant parkway trees within the City of Batavia. The \$400 Fee-in-Lieu amount is consistent with other Kane County communities and would cover the costs of purchasing a variety of tree species for parkway planting. Staff is proposing that in the event a development is seeking a fee-in-lieu that exceeds \$50,000 for the replacement of trees, it must be credited by resolution and approved by the City Council. Staff believes it is appropriate to require the City Council action due to the payment amount being accepted.

Undesirable Tree List: Staff has worked with the City of Batavia Tree Commission to develop a list of trees that are considered undesirable. Species on this list can be considered invasive, weak wooded, disease prone, or non-native that should not be grown locally. Staff recognizes that these species still provide some level of benefit to the local environment and community. That being considered, staff has determined that they should be removed from a property through development but would still require replacement at a rate of one (1) tree for every tree removed on the list.

Procedure for Appeals: The Subdivision Code currently does not have a formal process to appeal a decision issued by the Planning and Zoning Officer. Staff is proposing to implement an appeal process that mirrors the Zoning Code for these regulations. If a disagreement exists regarding the final decision made on a tree preservation plan through planning process, an applicant, the Mayor, City Council, or the City Administrator can file for an appeal of the approval within 10 calendar days of the issuance of Notice of Decision. Staff believes this process would align with how projects have traditionally been handled under the Zoning Code.

Definitions: Staff proposes to add definitions for Arborist, Development, Caliper, Diameter at Breast Height (DBH), Preservable Tree, and Tree Preservation Plan. The added definitions would assist staff with the administration of Chapter 9 of the Subdivision Code.

Staff Recommendation: Staff recommends the Plan Commission consider the proposed amendments to the Subdivision Code. The Commission can take positive or negative action on the attached amendment or may recommend modifications to the proposed amendment. The Commission may also continue the proposed amendment to a later date if additional information is needed.

- c Mayor and City Council
- Department Heads
- Media

Chapter 9 Tree Preservation

11-9-1: Title: This Chapter 9 of the Subdivision Code shall be known and cited as the “Batavia Tree Preservation Ordinance” or “Tree Preservation Ordinance”.

11-9-2: Purpose:

The purpose of this section is to maintain and preserve existing trees in the City and its planning area to the greatest extent possible, while allowing for responsible development of private property. The section intends to minimize the unnecessary removal of trees and, when removed; their appropriate replacement.

11-9-3: Applicability:

Existing trees may not be removed from lots on a development site within the City, wholly or in part, without a tree preservation or removal plan approved by the Planning and Zoning Officer. This section applies to the development or redevelopment of any property. This section does not apply to the removal of trees located in the public right of way or existing single family or two-family dwelling properties.

- A. **Procedure.** The tree preservation and removal plan must specify the tree(s) to be removed. The Planning & Zoning Officer shall issue a written Notice of Decision approving, approving with conditions or denying the plan. The Planning and Zoning Officer has the right to reduce or waive the requirements of this section for government agencies or their contractors for tree replacement rate valued under \$5,000 as determined by section 11-9-4.D. For developments where a replacement rate is calculated to exceed \$5,000 reductions or waivers require City Council review and approval by resolution.. A written Notice of Decision shall be provided for reductions or waivers granted from this Section. Upon the issuance of a Notice of Decision, a building permit must be obtained. The Notice of Decision shall be effective the 11th calendar day after approval, if no appeal has been filed. Appeals may be filed pursuant to Section 11-9-5. No tree removal pursuant to that plan may proceed until after the Notice of Decision becomes effective and a permit issued.
- B. **Criteria for Removal of Mature Trees.** Every reasonable effort must be made to incorporate existing trees into the landscape plan for the proposed development. The Planning and Zoning Officer must determine that one of the following criteria apply prior to granting approval to remove a mature tree:
 - a. The tree is dead, dying, diseased, or is listed on the undesirable tree list or a threat to public health or safety.
 - b. The tree interferes with the provision of public services or is a hazard to traffic.
 - c. The preservation of an existing tree would impede the growth and health of other trees within the development.

- d. The location of the tree prevents development or redevelopment that cannot be designed to protect the tree. The following will be considered when applying this criteria:
 - i. The preservation of an existing tree is in conflict with a requirement of Title 10, Zoning Code Regulations.
 - ii. The preservation of an existing tree would impede a development's ability to comply with the Kane County Stormwater Ordinance.
 - iii. The preservation of an existing tree impedes a development's ability to grade a site.

C. **Criteria for Tree Preservation Plan.** A tree preservation and removal plan must be prepared by a certified arborist. That Plan must provide the following information:

- a. The location of all existing trees with a caliper measurement of 6 inches or greater on the property.
- b. The location of all trees to be removed or preserved, numbered to correspond with the tree table.
- c. The species, size, condition, and recommended action for each tree in the form of a table.
- d. Tree Protection fencing shall be noted on engineering and site plans. Fencing shall be located at the limits of construction. The installation of fencing shall be in accordance with the City requirements as determined by the City Engineer.

D. **Financial Guarantee.** A financial guarantee for the purpose of assuring compliance with tree protection standards shall be required by the City. The financial guarantee amount shall be \$100.00 per tree to be retained, but in no case less than \$5,000.00.

E. **Consultant Fees.** The City Engineer or their designee is authorized to obtain professional services from a Certified Arborist. These services shall be considered in the event of a vacancy in the City Arborist position or as deemed appropriate by the City Engineer. All costs incurred shall be the responsibility of the petitioner/applicant. The Fees shall be set forth in section 11-9-4 of the City Code.

11-9-4: Replacement Standards:

- A. **Location.** Replacement trees must be planted on the zoning lot in question to the greatest extent possible. A tree required to be planted under Title 10 - Zoning Code Regulations or planted in the parkway does not qualify as a replacement tree. If the replacement cannot be planted on the zoning lot in question, then the Planning and Zoning Officer will determine a suitable location for the replacement trees or a fee-in lieu of the replacement trees in accordance with **this section**.
- B. **Replacement Rate.** The caliper diameter of a mature tree is measured at its breast height. The tree removed must be replaced within one year of the date of approval, or the applicant will be required to pay the city an amount equal to the full value of the tree to be removed.

In the event that a tree designated for preservation is destroyed, damaged, or removed during construction process, such tree must be replaced at a rate double of what is specified under the appropriate replacement rate table. Trees determined to be removed contravening this section within a three year period prior to a development application shall also be replaced at double the specified replacement rate. If it is determined that tree removal has occurred prior to approval from the Planning and Zoning Officer, a fine of up to \$750 per day for each lot in violation.

Table 1 Undesirable Tree List Replacement Rate

Caliper of Tree to be Removed	Number of Replacement Trees Required
6 to 12 inches	1
13 to 29 inches	1
30 inches to 35 inches	1
36 inches or greater	1

Table 2 Desirable Tree Replacement Rate

Caliper of Tree to be Removed	Number of Replacement Trees Required
6 to 12 inches	2
13 to 29 inches	4
30 inches to 35 inches	6
36 inches or greater	10

Table 3 Heritage Tree Replacement Rate

A Heritage Tree is defined as the following trees or species: Oak, Sugar Maples, Black Maples, Sycamore, American Elm, and Hackberry.

Caliper of Tree to be Removed	Number of Replacement Trees Required
6 to 12 inches	4
13 to 29 inches	6
30 inches to 35 inches	8
36 inches or greater	12

- C. **Replacement Size.** The minimum caliper size for a replacement tree shall be 2.5 inches.
- D. **Tree Valuation.** The value of a tree for replacement shall be a set rate of \$400 per tree required for replacement as determined by Tables 11-9-4-B.1-3.
- E. **Fee-In-Lieu.** A fee-in-lieu of providing replacement trees may be permitted with the written approval of the Planning and Zoning Officer in instances where they determine that the planting of such trees on-site is not practical. The fee required will be based upon a uniform fee per replacement set by this Chapter. Such payment must be placed into a fund to be used by the city for the acquisition, installation, and maintenance of replacement trees in the public right-of-way or a city owned property or other suitable publicly owned property

in the Batavia Planning Area. The lot granted the fee-in-lieu for replacement trees must be credited permanently by Notice of Decision identifying the number of trees for which payment was received by the city. In the event a lot is seeking a fee-in-lieu that exceeds \$50,000.00 for the replacement of trees this must be credited permanently by resolution identifying the number of trees for which payment was received by the City.

- F. **Special Relief from Tree Preservation Requirements.** The Planning and Zoning Officer may waive the requirement of tree replacement or fee-in-lieu, if a tree was not planted under an approved landscape plan if one of the following criteria is met:
 1. The tree is dead, dying, diseased, or a threat to public health or safety.
 2. The tree interferes with the provision of public services or is a hazard to traffic.
 3. The property where a tree is located is owned by a government agency.
- G. **Suspension of Permits.** The City may suspend any and all permits issued by the City and issue stop work orders with respect to any parcel of land where it has been determined to not be in compliance with the Tree Preservation Ordinance.
- H. **Undesirable Tree List:** Any tree on this list or otherwise noted by the City Arborist must be removed from the property as part of a tree preservation and removal plan.

Botanical Name	Common Name
Acer negundo	Box Elder
Acer saccharinum	Silver Maple
Ailanthus ssp.	Tree of Heaven
Elaeagnus angustifolia	Russian Olive
Fraxinus	All Ash trees
Maclura pomifera	Osage Orange
Morus ssp.	Mulberry
Populus ssp.	Poplar, Cottonwood, Aspen
Rhus ssp.	Sumac
Salix ssp.	Willow
Ulmus pumila	Siberian Elm

11-9-5: Procedure for Appeals:

- A. **Rights of Appeal.** A Notice of Decision issued by the Planning and Zoning Officer pursuant to this section may be appealed. An appeal may be filed by:
 1. The applicant
 2. The Mayor or a member of the City Council
 3. The City Administrator
- B. **Filing of Appeal.** An appeal must be filed with the Community Development Department on a form established by the Director. The appeal must set forth the decision or decisions being

appealed and the grounds upon which the appeal is based. The appeal must be accompanied by an applicable fee.

- C. Time Limits for Appeal. All appeals must be filed within 10 calendar days of the issuance of the Notice of Decision.
- D. Proceedings stayed by Appeal. The timely filing of an appeal must stay all proceeding in the matter appealed.
- E. Transmission of Record. The Director must forward the appeal and all other documents that constitute the record to the decision-making body.
- F. Standards. When reviewing any decision on appeal, the decision-making body must use only the record of decision to determine if the decision must be upheld, amended or reversed.

11-9-6: Definitions:

Arborist: An individual trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of trees.

Development: The construction of a new building or other structures on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use. Also means any man-made change to improved or unimproved real estate, including but not limited to parking, clearing of land, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Caliper: A circumferential measurement of a tree's trunk.

Diameter at breast height (DBH): The diameter of a tree measured at a height of four and half feet above the ground.

Preservable Tree: Any tree that is not dead, dying or diseased.

Tree Preservation Plan: A plan prepared by a Certified Arborist identifying existing trees, designating areas where trees will be preserved and removed.