

## MEMORANDUM

**TO:** Mayor Bodnar, Council President Schutt and Members of Council

**FROM:** Diane Wolgamuth, Director of Administration

**DATE:** February 28, 2020

**RE:** **Revisions to Chapter 1359 of the Codified Ordinances regarding Destruction and Removal of Trees**

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As recently reported in *The Plain Dealer*, the tree canopy in Cuyahoga County has decreased by 6,600 acres in the past decade. A copy of a Jan 26, 2020 article by Steven Litt is attached. Fortunately, Mayfield Village remains one of the communities maintaining a higher percentage of tree cover, thanks to having the North Chagrin Reservation of the Metroparks within its borders.

John Marrelli, Tom Cappello, John Marquart, Doug Metzger, Arborist Frank Stupczy and I have been working with the Chagrin River Watershed Partners (CRWP) and the Ohio Department of Natural Resources (ODNR) to update the Village's Tree Removal Ordinance (most recently updated in 1985) to reduce the number of living trees permitted to be removed from a property during a calendar year without obtaining a permit. We also wanted to create exemptions for work being done by the Village or for tree clearing where a development plan has already been approved or a building permit issued by the Village. Given the recent reporting on the urgency of protecting the tree canopy, we believe that the changes proposed are timely and appropriate.

Attached is a copy of current Chapter 1359 of the Codified Ordinances, titled Destruction and Removal of Trees. Also attached is the proposed draft revision. As the new draft is almost a complete re-write, I have summarized the major changes below:

1. We added an "Intent" section to describe the purpose of the regulation and requirement for a permit.
2. The Village's current ordinance regarding the removal and destruction of trees provides that not more than ten (10) living trees having a trunk diameter of nine (9) inches or more at a height of 14 inches above ground level, or more than 25% of the living trees on a parcel of land (whichever is fewer), may be removed in any one calendar year. The proposed ordinance reduces the number of living trees permitted to be removed from a property to no more than three (3) having a diameter at breast height of eight (8) inches or greater.
3. As we reviewed the ordinance, we felt that the process of having a hearing before the Board of Appeals for a tree removal permit was time consuming and burdensome for the applicant and outside the scope of the Board of Appeals' role to "hear appeals for exceptions to, and variances in, the application of resolutions, ordinances, regulations,

building codes, measures and orders of administrative officials or agencies governing zoning and building in the Municipality.” (MV Ord 1105.02) The proposed draft provides that tree permits will be issued by the Building Commissioner, after review by the Building Commissioner, Engineer and Arborist, with an opportunity to appeal to the Board of Appeals and ultimately to Council.

4. We added a provision to allow additional trees to be removed if, in the opinion of the Building Commissioner, Engineer and Arborist, they are likely to be damaged during construction or would interfere with the location of a driveway that cannot be located elsewhere on the property.
5. We made no change to the permit fee which is set forth in Chapter 1309 and is currently \$10.00.
6. We made no change to the penalty section, which provides for a fine of \$500.00 for each violation of this Chapter.

We look forward to discussing this matter with you at Monday’s meeting and addressing any questions that you might have. Unfortunately, John Marrelli will not be in attendance at the meeting; if Council has specific questions for him, we can discuss further at the March 16<sup>th</sup> meeting. If Council has questions for the Arborist or would like to hear from representative of the CRWP, we can invite them to the March 16<sup>th</sup> meeting as well.

If Council is comfortable with moving forward and has no suggested changes, we will have the ordinance finalized and prepared for a first read. Thank you for your consideration.

cc: Department Heads

Attachments: Jan 26, 2020 *Plain Dealer* Article, “Where have all the trees gone?”  
Current Chapter 1359 “Destruction and Removal of Trees”  
Proposed Draft of Chapter 1359

## Where have all the trees gone? Cuyahoga tree canopy shrinks by 6,600 acres; Lakewood hardest hit

By Steven Litt, *The Plain Dealer*

LAKEWOOD, Ohio — Nothing looks obviously out of kilter on a crisp winter day in Lakewood's tony Clifton Park neighborhood, where beautiful mansions command stunning views of Lake Erie.

But Cuyahoga County's newest [urban tree canopy assessment](#), released last month, shows that the neighborhood has suffered one of the highest levels of tree losses in the county over the past decade.

Clifton Park is a snapshot of what tree advocates are calling an emergency for climate resilience, natural habitat, property values and human health

Lakewood topped all 59 Cuyahoga communities with an 18.5% loss in its tree canopy, according to the assessment, which analyzes data gathered in 2017 to determine rates of change since an earlier report based on 2011 data.

Clifton Park shows up as a bright red hot spot in the [Urban Tree Canopy Viewer](#) on the new county webpage brimming with navigable maps and data about the county's growing bald patches.



A screenshot from the new online Cuyahoga County Tree Canopy Viewer depicts the Clifton Park neighborhood in Lakewood as a hotspot for tree losses in 2011-2017. Lakewood lost 18.5% of its tree canopy during that period, the highest rate of loss in the county. Cuyahoga County Planning Commission

The neighborhood accounted for 20% of Lakewood's losses between 2011 and 2017. That amounts to 37 acres of tree cover out of 182 acres lost in the city, according to a local report by Lakewood's urban forester, Chris Perry.

Overall, the county's tree canopy — the layer of leaves, branches and trunks of trees that cover the ground when viewed from above — fell from 37% to 35% of its land area.

That's a loss of 6,600 acres — the same as 5,000 football fields.

Causes for the decline include the age of trees, diseases, and more frequent violent storms sparked by climate change. Superstorm Sandy, as well as the emerald ash borer, whose larvae feed on the inner bark of ash trees, contributed to the losses between 2011 and 2017, the county report said.

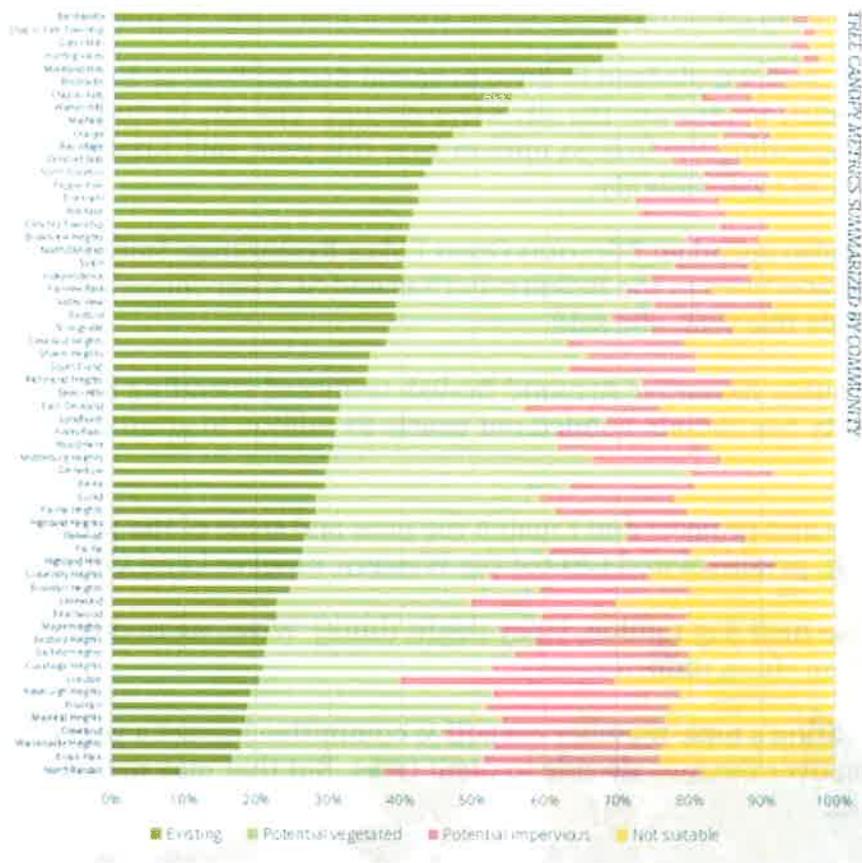
Clear-cutting for suburban residential and industrial projects was another big factor.

The report cites 16 places outside Cleveland that had clear cuts measuring 10 acres or more. Those areas totaled 248 acres and accounted for the loss of roughly 18,000 trees. The report doesn't identify the properties or owners involved.

In Cleveland, tree cover decreased from roughly 19% to roughly 18% of city land area, or 4.8%, between 2011 and 2017.

Only two communities, Euclid and Cuyahoga Heights, posted slight gains in tree canopy cover of just over 2%.

Bentleyville, with 74% tree coverage, is the greenest community in the county. North Randall, with a 10% canopy, is the grayest.



A graphic ranks Cuyahoga County communities from greenest to grayest, with Bentleyville at the top, and North Randall at the bottom. Cuyahoga County Planning Commission

Numerous studies show that trees absorb carbon dioxide; improve air quality, human health and property values; and soak up storm runoff.

Studies also show that the absence of trees, which is especially prevalent in neighborhoods redlined historically through [racist housing practices](#), creates urban “heat islands,” with deadly consequences during heat waves.

**No turning point reached**

Efforts by the city of Cleveland and Cuyahoga County since 2011 have yet to slow the tree losses, the report shows.

“It’s not good news,” said Sandra Albro, a research associate at Holden Forest & Gardens and co-chair of the Cleveland Tree Coalition, a group of more than 30 local government agencies and nonprofits working on solutions.

The coalition states in a news release that the county’s tree canopy cover falls below the U.S. average of 39% for urban areas. The county canopy is also shrinking faster than the 1% national rate for urban areas.

Communities are responding, but not quickly enough, Albro said.

Cleveland adopted a 25-year [tree plan](#) in 2016, and the [Cleveland Tree](#)

Coalition has been planting about 2,500 trees a year since then, Albro said.

Mayor Frank Jackson pledged in 2019 to spend \$10 million, or \$1 million a year for 10 years, to improve the city's tree canopy. The city is studying how best to start spending the first \$1 million later this year, said Kristin Hall, the city's director of sustainability.

The city will also spend an \$80,000 Great Lakes Restoration Initiative grant to plant 200 to 300 trees in the Bellaire-Puritas and St. Clair-Superior neighborhoods this year, she said.

Cuyahoga County Executive Armond Budish proposed spending \$5 million, and the county has already handed out nearly \$1 million in grants for 26 tree programs.

The promises and projects don't match the pace and scale of the problem, said Rich Cochran, president and CEO of the Western Reserve Land Conservancy.

"When people hear \$15 million, [they might think] 'Wow, we're done,'" he said. "Not even close, unfortunately."

The tree coalition's nine-member executive committee has set a goal of raising \$100 million over the next decade to plant trees. But that may not be enough, Cochran said.

Some 50,000 trees — at \$500 per tree — need to be planted to halt the downward trend, he said. Reversing the losses would require planting an additional 35,000 trees a year over the next decade, at a potential cost of hundreds of millions of dollars.

"We're trying to figure out ways to do it more economically," he said.

It would take such a mobilization to make Cleveland's tree canopy surpass 30% of its land area — a tipping point at which improvements could be measured in air quality, climate resilience and health, he said.

### **Crunching numbers**

The county gathered data for its tree canopy assessment from sources including the federal government's satellite-based National Agriculture Imagery Program, and through LIDAR, an airplane-based laser technology that measures and analyzes terrain and tree heights.

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Cuyahoga County tree canopy assessment update details losses

The methodology can't "see" young trees shorter than 8 feet or less than 30 square feet in area. That matters because the report doesn't show the impact of the 2,500 trees a year the tree coalition has been planting.

Recently planted trees won't register in satellite and laser scans until the next tree assessment in six to 10 years, Albro said.

The best way for municipalities to reverse the current downward trend is by adopting and enforcing ordinances requiring developers to preserve or plant new trees, or pay fines, Albro and other experts said.

“Too often, contractors and development folks simply cut every tree down, scrape the land and start building back,” said Brent Eysenbach, program manager for the Cuyahoga Soil & Water Conservation District.

Lakewood Mayor Meghan George said the city has rebooted its citizen-based tree committee and may re-examine its development ordinances.

The top issue, though, is persuading homeowners to plant more shade trees in their yards.

“We’re known for our tree-lined streets,” she said. In light of the loss of trees cited in the new report, “the only thing we can do is replace them as quickly as possible,” she said.

### **Human benefits of trees:**

- Studies show that trees absorb carbon dioxide; improve air quality, human health and property values; and soak up storm runoff.
- The absence of trees in city neighborhoods creates urban “heat islands,” with deadly consequences during heat waves.

### **Details of Cuyahoga County Tree Canopy Assessment Update, 2019:**

- Percentage decline in canopy, 2011-2017: 6.6%
- Decrease in acres: 6,600 acres
- Equivalent area in football fields: 5,000
- Loss in Cleveland tree canopy, 2011-2017: 4.8%
- Greenest community in the county: Bentleyville
- Grayest community: North Randall
- Biggest percentage loss of trees, 2011-2017: Lakewood

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## CHAPTER 1359

### Destruction and Removal of Trees

- 1359.01 Removal regulated; permit required.
- 1359.02 Application requirements.
- 1359.03 Recommendations by authorities.
- 1359.04 Hearing before Board of Appeals.
- 1359.05 Appeal to Council.
- 1359.06 Restraining injunction permitted.
- 1359.07 Permit; fee; bond.
- 1359.99 Penalty.

### CROSS REFERENCES

- Destruction of shrubs, trees or crops - see GEN. OFF. 541.06
- Street trees - see P. & Z. 1119.11
- Topsoil and trees - see P. & Z. 1119.03(c)
- Power to regulate shade trees and shrubbery - see Ohio R. C. 715.20
- Tree removal permit - see BLDG. 1309.05(r)

#### **1359.01 REMOVAL REGULATED; PERMIT REQUIRED.**

No person shall in any one calendar year, remove or destroy or cause to remove or destroy, by cutting, burning, bulldozing or any other means, more than ten living trees having a trunk diameter of nine inches or more at height of fourteen inches above the ground level, or more than twenty-five percent (25%) of the living trees having such trunk diameter, whichever is fewer, on any lot or parcel of land within the Municipality without first receiving the permit for such purpose from the Municipal Engineer and the Building Commissioner. If, however, in the opinion of the Engineer and the Commissioner, there are additional trees that should be removed or destroyed because their location is such that they shall suffer extensive damage during construction resulting in their ultimate death or because they would interfere with the location of a driveway that cannot practically be located elsewhere on the property, then, with the consent of the Engineer and the Commissioner, the person need not apply for the permit required herein before causing such trees to be removed or destroyed. (Ord. 85-9. Passed 7-15-85.)

#### **1359.02 APPLICATION REQUIREMENTS.**

The application shall set forth the name and address of each owner, lessee and person in possession of the lot or parcel upon which the trees are situated; the name and address of each person who shall be engaged in the destruction or removal of the trees; a statement as to whether the work will be performed under a written or oral agreement or contract together with a copy of the written agreement or contract or a statement of the essential terms of the oral agreement or contract; a statement of the kind, number and dimensions of the trees to be removed; and a legal description of each lot or parcel, or in lieu thereof, a description of sufficient detail so that such lot or parcel may be readily located on the plat map of the Municipality. (Ord. 74-28. Passed 5-20-74.)

#### **1359.03 RECOMMENDATIONS BY AUTHORITIES.**

The application shall be forwarded to the Board of Appeals of the Municipality by the Municipal Engineer and the Building Commissioner, within ten days after receipt thereof, together with their report and recommendations thereon. (Ord. 74-28. Passed 5-20-74.)

#### **1359.04 HEARING BEFORE BOARD OF APPEALS.**

The Board of Appeals shall set a date for hearing on the application and shall notify in writing the applicant and any other persons whom the Board deems to have an interest in the matter. The hearing shall be held within ten days after the report and recommendations of the Municipal Engineer and Building Commissioner are filed with the Board of Appeals. Written notice shall be given to the applicant at least five days prior to the date of the hearing. The Board of Appeals, after considering the reports and recommendations of the Municipal Engineer and Commissioner, as well as any and all

additional evidence presented by the applicant and other persons at the hearing, shall determine whether a permit shall be granted and may attach to the granting of the permit such conditions as it deems necessary to promote the public welfare. The Board of Appeals shall not grant the permit if it finds that such removal or destruction of trees is reasonably likely to cause soil erosion, result in pollution or an unreasonably large loss of oxygen, interference with drainage and the natural supply of water, or that it will result in an unsightly and blighted condition, or will depress property value in the Municipality. In no event shall the permit allow the removal or destruction of trees as described in Section 1359.01 hereof prior to the time of approval of the preliminary plan of a new subdivision, or if no new subdivision is to be created, prior to the time of the approval of the development plan or the issuing of a building permit for construction and the premises.  
(Ord. 74-28. Passed 5-20-74.)

**1359.05 APPEAL TO COUNCIL.**

In the event the Board of Appeals denies the application or attached conditions to its approval of the application, the applicant may appeal in writing to Council of the Municipality within thirty days after notification by the Board in writing, and Council by a vote of the majority of the members elected thereto shall at its next regularly scheduled meeting affirm, reverse or modify the decision of the Board of Appeals, subject to the limitations set forth in this chapter.  
(Ord. 74-28. Passed 5-20-74.)

**1359.06 RESTRAINING INJUNCTION PERMITTED.**

The Law Director or the owner of any property which will be specially damaged by the violation of this chapter is hereby authorized to apply to a court of general jurisdiction for an injunction to restrain violations of this chapter.  
(Ord. 74-28. Passed 5-20-74.)

**1359.07 PERMIT; FEE; BOND.**

If the application for a permit is granted by the Board or Council, the Building Commissioner shall issue the permit. The fee for such permit shall be as provided in Chapter 1309. The Commissioner is authorized to require the filing by the applicant of a bond, the penal sum of which shall be in an amount which the Commissioner reasonably estimates will be sufficient to pay the cost and expense of removing the rubble and refuse resulting from the cutting and removal of the trees. All such rubble and refuse shall be removed from the premises in such a manner that no fire hazard will result therefrom. The sureties on the bond shall be approved by the Mayor and the Law Director as to form.  
(Ord. 74-28. Passed 5-20-74.)

**1359.99 PENALTY**

Any person removing trees from land in this Municipality in violation of this chapter, and any person, who may be employed to assist in the commission of any such violation shall for each and every violation or noncompliance be fined not more than five hundred dollars (\$500.00). The destruction or removal of each tree in excess of the number permitted by Section 1359.01 hereof, without compliance with this chapter, shall constitute a separate offense.  
(Ord. 74-28. Passed 5-20-74.)

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## **Chapter 1359 – Removal and Destruction of Trees**

### **1359.01 INTENT**

Mayfield Village has determined that conserving its existing tree canopy is beneficial to the community. Therefore, in order to protect and further the public health, safety and general welfare and to promote the coexistence of development and the natural environment, this Chapter establishes regulations for tree preservation in connection with the clearing and grading of land for construction-related or other purposes. More specifically the purposes of these regulations are to:

- (a) Encourage responsible development and minimize the negative environmental impacts that can be associated with development.
- (b) Encourage the preservation of trees in order to reduce air, water and noise pollution; reduce the quantity of storm water run-off; protect natural stream assets; and protect, and, where possible, enhance valuable natural water resources.
- (c) Ensure that residential subdivisions, business, and industrial developments are carefully planned, designed and constructed to maintain and preserve the natural features of the site.
- (d) Ensure that proposed development integrates the natural features of a site into the development in ways that maximize the site's ecosystem benefits, including natural surface drainage and stabilization by minimizing grading activities, the destruction of trees and the removal of topsoil to the extent practicable.
- (e) Improve property values by ensuring the natural and unique features of the site are conserved, including mature trees, which studies show increase the value of real estate.

### **1359.02 PERMITTED LAND CLEARING.**

No person shall in any calendar year, remove or destroy or cause to remove or destroy, by cutting, burning, bulldozing or any other means, more than three (3) living trees having a diameter at breast height (DBH) of eight (8) inches or greater on any lot or parcel of land within the Municipality without first receiving a permit for such purpose from the Building Commissioner. Tree cutting shall only be permitted when approved according to this Chapter and only for purposes of grading or excavating an area in preparation for construction thereon of dwellings, buildings or structures permitted in the district in which the area is located, except as exempted in Section 1359.10. All tree removal and land clearing activities shall comply with the regulations set forth in this Chapter.

### **1359.03 CUTTING OF TREES.**

- (a) Approval Required. There shall be no clear-cutting, timbering, selective cutting, or commercial cutting of trees on any piece or parcel of land located within the Village without a permit, except as otherwise exempted in Section 1359.10.
- (b) Clear Cutting. Clear cutting, as used in this Chapter, means a system of tree harvesting that removes all the trees in a given area. Clear-cutting is prohibited, except to the extent necessary

to clear a building site, yard, driveway and right-of-way providing access to the site from a public street.

(c) Selective Cutting. As used in this Chapter, "timbering, selective cutting or commercial cutting" means the cutting of trees having a DBH of eight (8) inches or greater. Selective cutting of timber shall be permitted under the following conditions, upon application to and approval of the Building Commissioner, as follows:

(1) The Building Commissioner, the Engineer, an Arborist selected by the Village and the property owner or his or her representative shall together inspect the wooded area to be selectively cut in order to butt brand and paint stripe the specific trees to be cut.

(2) Only trees so branded and marked shall be cut. Each unauthorized cutting of an unmarked tree shall constitute a separate violation of the Zoning Code and shall constitute grounds for the immediate revocation of the approval to cut trees and/or any other permit issued.

#### **1359.04 APPLICATION REQUIREMENTS.**

For applications involving the removal or destruction of trees, the applicant, who must be the owner of the parcel, shall provide:

(a) The address or a legal description of each lot or parcel, or in lieu thereof, a description of sufficient detail so that such lot or parcel may be readily located on the plat map of the Municipality;

(b) A statement of the kind, number and dimensions of the trees to be removed, including the diameter of the tree measured at breast height (DBH) ;

(c) The name and address of the owner of the parcel and the name and address of each person who shall engage in the cutting or removal of trees on such parcel, either under contract or any other arrangement with the owner; and

(d) A copy of the contract covering such arrangement for the cutting or removal of trees, or if there is no such contract reduced to writing, a succinct statement of the terms and provisions of such arrangement.

#### **1359.05 ISSUANCE OF TREE REMOVAL PERMIT.**

Within ten (10) days of receipt of an application for tree removal, the Building Commissioner, Engineer and an Arborist selected by the Village, shall review the matter and the Building Commissioner shall issue to the applicant a permit specifying the trees that are permitted to be removed. If, in the opinion of the Building Commissioner, Engineer and Arborist, there are additional trees that should be removed or destroyed because their location is such that they shall suffer extensive damage during construction resulting in their ultimate death or because they would interfere with the location of a driveway that cannot practically be located elsewhere on the property, these additional trees will be permitted to be removed and will be included in the permit, whether or not they were included in the original application.

In no event shall the removal or destruction of trees be permitted prior to the approval of the preliminary plan of a new subdivision, or if no new subdivision is to be created, prior to the approval of a development plan or the issuing of a building permit for construction.

#### **1359.06 APPEAL TO BOARD OF APPEALS.**

Within ten (10) days of receipt of the permit issued by the Building Commissioner, the applicant may appeal the terms of the permit to the Board of Appeals. Within thirty (30) days of receipt of an appeal, the Board of Appeals shall set a date for hearing and shall notify, in writing, the applicant and any other persons whom the Board deems to have an interest in the matter, at least five (5) days prior to the hearing. The Board of Appeals shall consider the recommendation of the Building Commissioner, Engineer and Arborist, as well as any and all additional evidence presented by the applicant and other persons at the hearing. The Board of Appeals shall determine whether the permit shall be expanded and may attach such conditions as it deems necessary to promote the public welfare. The Board of Appeals shall not expand the permit if it finds that such removal or destruction of trees is reasonably likely to cause soil erosion, result in pollution or an unreasonably large loss of oxygen, interference with drainage and the natural supply of water, or that it will result in an unsightly and blighted condition, or will depress property value in the Municipality.

#### **1359.07 APPEAL TO COUNCIL.**

If the Board of Appeals denies the appeal of the applicant or attaches conditions to its approval, the applicant may appeal in writing to Council within thirty (30) days after notification by the Board of Appeals of its decision. Council, by a vote of the majority of the members elected thereto, shall at its next regularly scheduled meeting affirm, reverse or modify the decision of the Board of Appeals, subject to the limitations set forth in this chapter. Council shall not expand the permit if it finds that such removal or destruction of trees is reasonably likely to cause soil erosion, result in pollution or an unreasonably large loss of oxygen, interference with drainage and the natural supply of water, or that it will result in an unsightly and blighted condition, or will depress property value in the Municipality.

#### **1359.08 RESTRAINING INJUNCTION PERMITTED.**

The Law Director or the owner of any property which will be damaged by the violation of this Chapter is hereby authorized to apply to a court of general jurisdiction for an injunction to restrain violations of this Chapter.

#### **1359.09 PERMIT; FEE; BOND.**

The fee for a tree removal permit shall be as provided in Chapter 1309. The Building Commissioner is authorized to require the filing by the applicant of a bond, the penal sum of which shall be in an amount which the Commissioner reasonably estimates will be sufficient to pay the cost and expense of removing the rubble and refuse resulting from the cutting and removal of the trees. All such rubble and refuse shall be removed from the premises in such a

manner that no fire hazard will result therefrom. The sureties on the bond shall be approved by the Mayor and the Law Director, as to form.

### **1359.10 EXEMPTIONS FROM TREE PERMIT.**

The following activities and properties are exempt from the regulations in this Chapter and no tree removal permit is required:

- (a) The removal of trees necessary for the construction, operation and maintenance of drainage facilities and sanitary and storm sewers approved by the Village.
- (b) The removal of trees for construction of public roadways and improvements approved by the Village, including new subdivisions for which a development plan has been approved by the Planning & Zoning Commission or other construction that has been issued a building permit.
- (c) The removal of trees in time of emergency or which pose potential danger to life or property.
- (d) The removal of trees required for the installation, maintenance and repair of underground and overhead utilities approved by the Village.

### **1359.99 PENALTY**

Any person removing trees from land in this Municipality in violation of this chapter, and any person who may be employed to assist in the commission of any such violation, shall for each and every violation or noncompliance be fined not more than five hundred dollars (\$500.00). The destruction or removal of each tree in excess of the number permitted by Section 1359.02 hereof, without compliance with this chapter, shall constitute a separate offense.