

**VILLAGE OF MICHIANA  
COUNTY OF BERRIEN  
STATE OF MICHIGAN**

**ORDINANCE NO. 2004-06  
Effective August 16, 2004**

**AN ORDINANCE TO ADOPT REGULATION FOR THE  
PRESERVATION OF TREES IN THE VILLAGE OF MICHIANA  
TO ESTABLISH PROVISIONS FOR RETENTION, REMOVAL  
AND REPLACEMENT AND TO PROVIDE FOR PENALTIES.**

**THE VILLAGE OF MICHIANA ORDAINS: 19.000**

**SECTION 1. PURPOSE OF DECLARATION. 19.001**

The Village Council of the Village of Michiana finds that remodeling, renovation and further development of the Village has resulted in and continues to cause an unregulated and, in many cases, unnecessary removal of trees and other forms of vegetation. Regulation of such removal of trees, vegetation and natural growth will achieve preservation of important physical, aesthetic, recreational and economic assets for both present and future generations. Specifically, the Village Council finds:

(1) Woodlands provide for public safety through the prevention of erosion, siltation and flooding on the fragile dunes that comprise a majority of land area of the Village.

(2) Woodland growth protects public health through the absorption of air pollutants and contamination, including the reduction of excessive noise, pollutants and contamination, including the reduction of mental and physical damage related to noise pollution.

(3) Trees, vegetation and associated natural growth provide a material aspect of the character of the Village.

(4) Trees and woodland growth serve as an essential component of the general welfare by maintaining natural beauty, recreation and irreplaceable natural heritage.

Therefore, the purposes of this section are as follows, to be applied throughout the Village:

(1) To provide for the protection, preservation, proper maintenance and use of trees and woodlands in order to minimize disturbance to them and to prevent damage from erosion and siltation, a loss of wildlife and vegetation and/or from the destruction of the natural habitat.

(2) To protect the woodlands, including trees and other forms of vegetation, for their economic support of local property values when allowed to remain uncleared in whole or in significant part, and for their natural beauty, character and geological, ecological or historical significance.

(3) To provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of this Village in keeping with article IV, section 52, of the state constitution of 1963 and the intent of the state Environmental Protection Act, Act No. 127 of the Public Acts of Michigan of 1970 (MCL 691.1201 et seq., MSA 14.528(201) et seq.), as amended.

(4) To provide for a thorough mix of trees indigenous to this area, and to avoid problems encountered in the past with monoculture (for example, Dutch Elm disease and American Elm) with no one genus of trees constituting more than 20 percent of the total tree population and no one species of trees constituting more than ten percent of the tree population. Diversity of species may be reduced on sites where ten or less replacement trees are to be planted.

## **SECTION 2. DEFINITIONS.**

**19.002**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Conservation area means a parcel of land perpetually dedicated for the preservation of protected trees which meets the minimum requirements set forth in this article.

Diameter breast height (d.b.h.) means a tree's diameter in inches measured by diameter tape at 4-1/2 feet above the ground. On multistem trees, the largest diameter stem shall be measured.

Drip line means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

Landscape trees means those trees to be planted whenever the zoning ordinance or the direction of the environmental review board calls for the installation of landscaping. The use of trees which are unprotected species is prohibited for use as landscape trees.

Protected tree means any tree having a diameter breast height (d.b.h.) of nine inches or greater within a designated wetland or floodplain or any tree in upland areas having a d.b.h. of nine (9") inches or greater and which has a species identified as native to the Berrien County, Michigan area. The following genus of trees are examples of protected trees:

- Oaks (Querus)
- Hard Maples (except Japanese) (Acer)
- Hackberry (Celtis)
- Planetree (Sycamore) (Platanus)
- Birch (Betula)
- Beech (Fagus)
- Ginkgo (male) (Ginkgo)
- Honeylocust (Thornless Cultivars only) (Gleditsia)
- Hophornbeam (Ironwood) (Ostrya)
- Linden (Tilia)
- Ashes (Faxinus)
- Hickory (Carya)
- Hornbeam (Blue Beech) (Carpinus)
- Amelanchier (Amelanchier)
- Redbud(Cercis)
- Dogwood (Tree Form) (Cornus)
- Hawthorn (Crataegus)
- Flowering Crabapple (Disease Resistant Cultivars) (Malus)
- Flowering Plum (tree form) (Prunus)
- Flowering Pear (Pyrus)
- Magnolia (Magnolia)
- Hornbeam (Carpinus)
- Rose of Sharon (Hibiscus)
- Fir (Abies)
- Hemlock (Tsuga)
- Spruce (Picea)
- Pine (Pinus)

Douglas Fir (*Pseudotsuga*)  
Juniper (*Juniperus*)  
Arborvitae (*Thuja*)

The following trees shall not be deemed to be protected trees unless located in a designated wetland or floodplain and/or protected by state or federal law:

Balsam Fir (*Abies balsamea*)  
Boxelder (*Acer negundo*)  
Silver Maple (*Acer saccharinum*)  
Tree of Heaven (*Ailanthus altissima*)  
European White Birch (*Betula pendula*)  
Catalpa (*Catalpa speciosa*)  
Gingko (Female Only) (*Ginkgo bilboa*)  
Common Honeylocust  
(Thornless Cultivars Protected) (*Gleditsia tiancunthis*)  
White Mulberry (*Morus alba*)  
Red Mulberry (*Morus rubra*)  
Poplars (*Populus species*)  
Black Locust (*Robina pseudoucacia*)  
Willows (*Salix species*)  
Siberian Elm (*Ulmus pumila*)

All replacement trees shall be considered protected trees at time of placement, regardless of size.

Transplant means the relocation of a tree from one site to another within the Village.

Tree means any self-supporting, woody plant of a species which normally grows to an overall height of 15 feet or more.

Tree survey means a minimum of one inch equals 100 feet scale drawing which provides the following information: location of all protected trees, plotted by accurate techniques, and the common or botanical names of those trees and their d.b.h.

**SECTION 3. PENALTY FOR VIOLATION.**

**19.003**

Any person violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of up to \$500.00 or imprisonment for up to 90 days, or both. Enforcement of this article is authorized by any enforcement officer duly appointed by the Village. The removal or damage of each protected tree shall constitute a separate offense.

**SECTION 4. TREE REMOVAL - PERMIT REQUIRED.**

**19.004**

Requirement established. Subject to the exceptions enumerated in this article, no person shall remove, cause to be removed, transplant, damage or destroy, on any land in the city, any protected tree without first obtaining a tree removal permit.

The Village Council shall from time to time set the fees and charges for the inspections and services required under this Ordinance.

**SECTION 5. PERMIT NOT REQUIRED FOR CERTAIN ACTIVITIES.**

**19.005**

The following activities shall be permitted without a tree removal permit unless otherwise prohibited by law:

(1) Emergencies. Actions made necessary by an emergency, such as tornado, windstorm, flood, freeze, dangerous and infectious insect infestation or disease, or other disaster, in order to prevent injury or damage to persons or property or restore order, and where it would be contrary to the interest of the public, or to the health or safety of one or more persons, to defer cutting pending submission and processing of a permit application.

(2) Governmental agencies. Except as otherwise provided in this article, tree trimming or transplanting performed by, or on behalf of, governmental entities or agencies.

(3) Public utilities. Except as otherwise provided in this article, repair and/or maintenance work performed by public utilities necessitating the trimming of trees.

(4) Dead or damaged trees. Removal of dead or damaged trees shall be allowed as follows:

(a) Removal or trimming of dead, diseased or damaged trees where the damage resulted from an accident or nonhuman cause or trees certified by a registered forester to be in an advanced state of decline due to age or disease.

(b) Where protected trees on a site are already dead, dying or in decline prior to and at the time of filing an application for a building permit and/or application for a tree removal permit, the trees shall be considered as nonprotected trees. Trees of a protected species that are in terminal decline and not expected to survive naturally beyond the proposed activity time frame shall be treated as follows: The applicant confirmation by the Tree Inspector that the protected trees are in terminal decline and are not expected to survive naturally beyond the proposed activity time frame, may remove the trees subject to reasonable replacement.

(5) Cases where there are no trees on a site, no protected trees on a site or no protected trees to be removed from a site. In those instances where there are no trees on a site, no protected trees proposed to be removed from a site, the Tree Inspector shall cause a review of the plans and inspection of the site to determine that such is the case. Should such plan review and site inspection ascertain that there are no trees on a site, no protected trees on a site or no protected trees proposed to be removed from a site, the Tree Inspector shall be authorized to administratively recommend approval to the Village Council as it may relate to this chapter.

## **SECTION 6. SITE PLAN TREE REMOVAL PERMIT.**

**19.006**

(1) Review process during construction. An application for a building permit shall constitute an application for a tree removal permit, if required under this article. The application shall provide, in addition to all other information and documents required for such approval, the following:

(a) Development envelope. For each parcel or building site within a parcel on which protected trees are present, the applicant shall designate a development envelope on all site plans submitted for approval. The development envelope shall be the area enclosed by the exterior walls of all buildings and the outside edges of all vehicular parking and access drives and utility easements, plus a reasonable transition area beyond such improvements up to ten feet for utilities, parking lots and drives and 15 feet for buildings. With the objective of preserving trees, and also

allowing reasonable development, the transition area may be reallocated around the perimeter of proposed improvements so as to best preserve vegetation while recognizing site constraints such as topography, wetlands, or access points.

(b) Tree survey. A tree survey shall be submitted which accurately identifies, sizes, and locates all protected trees which fall within the development envelope.

(c) Landscape plan. A landscape plan shall be provided demonstrating the manner in which the applicant shall replace or relocate protected trees as required by this article and how such trees shall be protected during construction activity.

(2) Protected trees within development envelope. Protected trees removed within the development envelope shall be replaced as required in Section 8. Protected trees retained and safeguarded within the development envelope shall be credited against the required replacement for protected trees removed as provided in Section 8.

(3) Protected trees outside the development envelope. All protected trees outside of the development envelope shall be retained and protected as provided in Section 8.

(4) Approval or denial. If the Tree Inspector determines the requirements of this article have been met, together with all other requirements for site plan approval, the action granting such approval shall constitute issuance of a tree removal permit for the activity depicted on the approved plans. Whenever a tree removal permit is granted pursuant to this section, the Tree Inspector shall do the following:

(a) Conditions. Attach to the granting of the permit any reasonable conditions considered necessary to ensure the intent of this article will be fulfilled and to minimize damage to, encroachment in, or interference with, natural resources and processes within wooded areas including, without any limitation, the trees to be preserved;

(b) Site Conference. The Applicant or his designated representative (which shall include the general contractor) shall meet, prior to commencement of any site activities to discuss and review tree removal, preservation of existing trees, transplanting and replacement operations are all conducted in a fashion to ensure the trimming, removal,

protection, and plantings occur in a proper manner and at correct times of the year, which activities may be extended or modified from time to time at the request of the applicant for good cause shown;

(5) Term of permit. A tree removal permit issued under this section shall be null and void if the site plan is not processed and completed as required by Ordinance or state law. Permits which become null and void as provided in this section will require a new application.

(6) Successors in interest to applicant. Successors in interest to the applicant shall conform to the subdivision or site plan tree removal permit and its conditions in their subsequent ownership, improvement, and occupancy of the property.

## **SECTION 7. GENERAL TREE REMOVAL PERMITS.**

**19.007**

(1) For vacant lots, individual single-family residential lots and other building sites, permit procedure shall be as follows:

(a) Application. A person seeking a protected tree removal permit for any vacant lot, individual single-family residential lots and/or other residential parcels of property must submit a written application to the Tree Inspector, on a form provided by the Village Clerk.

(b) Time of application. Application for a tree removal permit shall be made before removing, cutting or transplanting protected trees.

(c) Permit application. Those persons seeking a protected tree removal permit for vacant lots, individual single-family residential lots and/or other single-family residential parcels of property shall submit with their permit application a plan containing the following information:

(i) Property dimensions. The boundaries and dimensions of the property and the location of any existing and/or proposed structure or improvement with a statement identifying the type of structure or improvement.

(ii) Inventory of trees. Location of all existing protected trees identified by common or botanical names, with all of the existing protected trees to be removed to be tagged.

(iii) Easements. Information providing the location of existing easements.

(iv) Grade changes. If construction is to occur on the property, the applicant shall provide the designation of grade changes proposed for the property, if any.

(v) Intended tree replacement. A proposed tree replacement program with an explanation of the number, size and common name of the replacement trees.

(d) Administrative review. The Tree Inspector shall review the submitted tree removal permit application to verify that the applicant has provided all required information. Upon request of either the applicant or the Tree Inspector, the Village may conduct a field inspection or review.

(e) Denial of tree removal permit. Whenever an application for a tree removal permit is denied, the permit applicant shall be notified, in writing of the reasons for denial.

(f) Tree removal permit. Whenever an application for a tree removal permit is granted, the Tree Inspector:

(i) Conditions. May attach to the granting of the permit any reasonable conditions considered necessary to ensure the intent of the article regarding encroachment in, or interference with, natural resources and processes within wooded areas including, without any limitation, the trees to be preserved.

(ii) Completion of operation. Shall fix a reasonable time up to a maximum of 18 months to complete tree removal, transplanting and replacement operations ensuring that plantings occur at correct times of the year.

(iii) Term of permit. A tree removal permit issued under this section shall be null and void if commencement of work permitted under the permit has not been commenced within

a reasonable time, not to exceed 12 months. In addition, a permit shall be void after the expiration of 24 months from the date of issuance. Permits which become null and void as provided in this section will require a new application.

**SECTION 8. APPLICATION REVIEW STANDARDS.**

**19.008**

The following standards shall govern the granting or denial of an application for a tree removal permit:

(1) **Permits issued with site plan approval.** The Tree Inspector shall issue a tree removal permit when, in the reasonable exercise of discretion, it has been determined that:

(a) The removal or transplanting of protected trees is necessary within the development envelope for the construction of a structure or other site improvement required for development of the property.

(b) The development envelope has been so located within the area permitted by the Village's Ordinances so as to maximize the preservation of protected trees and to maintain and/or enhance the diversity of species of protected trees.

(c) The tree relocation or replacement proposed meets the requirements of Section 8 and enhances the diversity of species of protected trees.

(d) The requirements of this article have been satisfied.

(2) **General tree removal permits.** The Tree Inspector shall issue a tree removal permit when, in the reasonable exercise of his discretion, the Tree Inspector has determined that:

(a) The removal or transplanting of protected trees is necessary for the construction of a structure or other site improvement permitted under the Village's Ordinance and no feasible or prudent alternative location on the property is available.

(b) The location of the proposed structure or site improvement requiring removal of a protected tree has been selected so as to minimize the removal or relocation of protected trees.

(c) The tree requested for removal is so situated as to endanger human health or safety or to threaten injury to structures or site improvements, and no feasible or prudent remedial measure is available to preserve the protected tree.

(d) The proposed tree removal or relocation otherwise complies with this article and other applicable law.

## **SECTION 9. TREE RELOCATION OR REPLACEMENT.**

**19.009**

(1) Requirement established. For each protected tree which is permitted to be removed by permit granted under this Section, the applicant shall replace or relocate trees according to the replacement tree requirements set forth in subsection (2) of this Section.

(2) Replacement tree requirements. Requirements for the replacement of trees are as follows:

(a) Description; requirements.

(i) Replacement trees shall be of a protected species, shall have potential and/or other characteristics comparable to the removed trees, shall be State Department of Agriculture Nursery Grade No. 1 or better and must be approved by the Village prior to planting. In order to guarantee a reasonable rate of survival for replacement trees planted pursuant to this Section, the following list of trees has been deemed inappropriate for landscape in the Village and shall not be used as replacement trees: sugar maple, red maple, ornamental cherries and plums, and Bradford pear. Recommended alternatives are cultivars of each species, readily available in State nurseries. Bradford pear is a cultivar of the *Pyrus* species, but shall not be used as a replacement tree for planting. Ornamental cherries and plums shall not be used as replacement trees, and cultivars are not available.

(ii) Replacement trees must also meet the following requirements:

(a) Replacement trees should be staked only if necessary and must be fertilized and mulched and shall be guaranteed for two years.

(b) Trees planted under overhead wires shall not exceed a maturity height of 15 feet.

(c) Conifers and deciduous canopy trees planted alongside sidewalks, paths, walks, and roadways shall be planted at a distance from the pavement equal to one-half the mature spread of the trees.

(b) Trees of a protected species usable for replacement trees may be transplanted on site using appropriate and accepted procedures and precautions.

(c) Protected trees allowed to be removed through the permit process shall be replaced on a one-to-one ratio as follows:

(i) Deciduous canopy trees. Replacement trees shall be canopy trees having a diameter no less than 2-1/2 inches at 12 inches above grade.

(ii) Evergreen trees. Replacement trees shall be evergreen trees of eight-foot minimum height.

(iii) Understory trees. Replacement trees shall be understory trees having a diameter no less than 2 inches at 12 inches above grade for single stem trees or a minimum of 8 foot height for multiple stem trees.

(iv) All replacement trees shall be considered protected trees at time of placement, regardless of size.

(1) The tree removal permit grantee shall conspicuously display the permit on site. The permit grantee shall display the permit continuously while trees are being removed or replaced or while activities authorized under the permit are performed. The permit grantee shall allow Village representatives to enter and inspect the premises at any reasonable time, and failure to allow inspection shall constitute a violation of this section.

(2) The Tree Inspector may issue a stop work order or the building inspector may withhold issuance of a certificate of occupancy, permits or inspections if this article is being violated and/or until the provisions of this article, including any conditions attached to a tree removal permit, have been fully met.

**SECTION 11. FEES**

**19.011**

The fee for each permit required hereunder shall be set from time to time to resolution of the Village Council.

**SECTION 12. VARIANCES.**

**19.012**

(1) In such cases where the Village Council finds a practical difficulty exists in complying with the strict application of this article, it may grant a variance to a person denied a site plan or general tree removal permit by the Tree Inspector; or

(2) The Village Council shall conduct a public hearing upon any variance application after public notice of the hearing is published in a newspaper having general circulation within the Village not less than five days preceding the hearing.

(3) In determining the existence of a practical difficulty, the Village Council shall consider:

- (a) The intent and purposes of this article;
- (b) The character and community value of the protected trees affected;
- (c) The presence of unique circumstances which makes compliance with the Ordinance physically impractical; and

(d) The imposition of such conditions upon the grant of a variance as may be necessary to preserve, protect and/or propagate protected trees.

This Ordinance shall become effective after public hearing, adoption and publication in accordance with the Charter of the Village of Michiana and the laws of the State of Michigan.