

ORDINANCE NO. 945

**AN ORDINANCE AMENDING THE KENILWORTH
VILLAGE CODE, 1959, REGARDING TREE PRESERVATION**

Passed by the Board of Trustees this 11th day of October, 2005

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VILLAGE OF KENILWORTH, ILLINOIS

Village Clerk

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VILLAGE CODE, 1959, REGARDING TREE PRESERVATION**

WHEREAS, the Village of Kenilworth has been recognized for its forested environment, which environment is an essential part of the character of the Village; and

WHEREAS, the presence of trees in the Village improves air quality, conserves energy, provides wildlife habitat, reduces soil erosion, enhances storm water detention and drainage, and preserves and enhances property values in the Village and its environs; and

WHEREAS, the preservation and protection of trees, both on private as well as publicly owned lands, positively affects both the quality of life and the general welfare of the Village; and

WHEREAS, according to responses to a recent survey of Village residents, the protection and preservation of mature trees in the Village is important in defining the character of the Village; and

WHEREAS, after careful deliberation, the Village's *Ad Hoc* Committee on Community Planning has recommended that the Village Board adopt regulations designed to protect, preserve, and enhance the forested character and natural resources of the Village; and

WHEREAS, the Building, Zoning, and Planning Committee has reviewed the *Ad Hoc* Committee's recommendations, and found that the adoption of tree preservation regulations for certain trees in the Village will benefit the public health, safety, and welfare; and

WHEREAS, the President and Board of Trustees of the Village of Kenilworth have determined that it is in the best interests of the Village and the public to amend the Kenilworth Village Code, 1959 ("*Village Code*"), to provide for tree preservation, as set forth in this Ordinance;

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF KENILWORTH, COOK COUNTY, ILLINOIS, as follows:

SECTION 1. RECITALS. The recitals listed above are incorporated in this Ordinance as the findings of the President and Board of Trustees.

SECTION 2. AMENDMENT. Chapter 34 of the Village Code, entitled “Trees and Shrubs” shall be, and it is hereby, amended to reclassify the existing regulations in Chapter 34 under a new Article I, entitled “General Provisions.”

SECTION 3. TREE PRESERVATION REGULATIONS. Chapter 34 of the Village Code, entitled “Trees and Shrubs” shall be, and it is hereby, further amended to add a new Article II, entitled “Tree Preservation,” which new Article II shall hereafter be and read as follows:

ARTICLE II. TREE PRESERVATION.

Sec. 34-9. Purpose.

The preservation, protection, and replacement of trees under the Article is intended to accomplish the following benefits:

(a) Protect and enhance the quality of life and the general welfare of the Village and its residents, and conserve and enhance the Village’s physical and aesthetic environment, by (i) reducing energy consumption through summer shade and protection from winter wind, (ii) providing a buffer and screen against noise, light, and pollution, and (iii) reducing air pollution through the removal of harmful carbon dioxide, the generation of oxygen, and the precipitation of dust and other airborne materials;

(b) Protect and increase property values in a manner that maintains each property owner’s enjoyment of his or her property;

(c) Recognize and maintain the historic significance and natural heritage of the Village;

(d) Protect and enhance the natural environment by providing habitat and food that are essential for wildlife, including migratory and nesting birds, and to sustain them and the many benefits they provide, including control of disease-carrying insects;

- (e) Stabilize topsoil by preventing or minimizing soil erosion and sedimentation;
- (f) Assist in controlling storm water runoff;
- (g) Protect existing healthy trees during the course of construction and development.

Sec. 34-10. Definitions.

For the purposes of this Article II, the following terms, phrases, words, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future or past tense, and words in the singular include the plural. Words not defined in this Section shall have their usual and customary meaning.

(a) Construction Activity. Any manmade change to improved or unimproved real estate that will or may result in impact on, damage to, or removal of a protected tree or heritage tree, including, without limitation: (i) demolition of buildings or structures; (ii) the construction, installation, or enlargement of buildings, structures, streets, or utilities that will affect a protected tree or heritage tree or its root zone; (iii) dredging, filling, clearing, drilling, mining, grading, paving, or excavating operations that will affect a protected tree or heritage tree or its root zone; (iv) storage of materials, including dumpsters, in the root zone of a protected tree or heritage tree; and (v) driving of vehicles or equipment in the root zone of a protected tree or heritage tree, other than on established driveways.

(b) Damage. Any direct or indirect action that causes, or is reasonably likely to cause, the death or substantial destruction of a tree or a significant loss of a tree's structural integrity including, without limitation, destruction, poisoning, carving, mutilating, girdling, severing the main trunk, leader, or large branches or roots, removing any portion of the bark from the main trunk, leader, or large branches, touching with live wires, crushing or exposing the roots, digging or drilling any hole or trench within the root zone, filling with soil or other materials within the root zone, compacting a substantial portion of the soil in the root zone, or moving a tree to another location. Without limitation of the foregoing, "damage" does not include the pruning of trees in accordance with national pruning standards.

(c) Diameter at Breast Height ("DBH"). The diameter of the trunk of a tree measured in inches at a point four and one-half (4 1/2) feet above the existing grade at the base of the tree. All references to diameter size shall be to the DBH.

(d) Diseased Tree. Any of the following types of trees: (i) trees of any species or variety infected with dutch elm disease or oak wilt, as determined by laboratory analysis or by any other reliable means; (ii) trees or

parts thereof of elm or zelkova, or of any other species, in a dead or dying condition that may serve as breeding places for the European elm bark beetle, dutch elm disease, or oak wilt; (iii) trees of any species or variety infected with, or that may serve as breeding places for, the Asian long horned beetle or the Asian cerambycid beetle (*anoplophora glabripennis*); or (iv) trees harboring other diseases or infestations that create a condition that is otherwise unsafe and a hazard to the urban forest.

(e) Heritage Tree. All genus, species, varieties, and cultivars of trees with a DBH equal to or greater than 18 inches.

(f) Impact. Any act that causes, or is reasonably likely to cause, the loss in value or loss in aesthetic value of a tree. Without limitation of the foregoing, “impact” does not include the pruning of trees in accordance with national pruning standards.

(g) Lot. Any lot of record in the village, or any lot as defined in the village zoning regulations.

(h) National Pruning Standards. The standards adopted by the American National Standards Institute, ANSI A300 (Part 1)-2001 Pruning, as such standards may be amended from time to time.

(i) Person. Any public or private individual, group, company, firm, corporation, partnership, association, society, entity, or any other combination of human beings, whether legal or natural, including, without limitation, public utilities, but not the Village or its employees or officials acting in their official capacity.

(j) Protected Tree. Protected tree means the following:

(i) All genus, species, varieties, and cultivars of deciduous trees with a DBH of at least 10 inches but less than 18 inches;

(ii) All coniferous trees, regardless of their DBH, that exceed 30 feet in height; and

(iii) All trees located on any public right-of-way or property that is owned by, or under the jurisdiction of, the Village.

(k) Remove or Removal. The physical detachment or elimination of a tree, or the effective detachment or elimination of a tree, through damage or other direct or indirect action resulting in, or likely to result in, the death of the tree. Without limitation of the foregoing, “remove” or “removal” does not include the pruning of trees in accordance with national pruning standards.

(l) Required Yard. Any yard required to be established on any lot pursuant to the applicable zoning district regulations of the Village zoning regulations.

(m) Root Zone. The area inscribed by an imaginary circular line on the ground beneath a tree and surrounding a tree and measured from the perimeter of the base of the trunk of the tree for a distance equal to one (1) foot for every one (1) inch of DBH. The root zone may be located, in part, outside of the lot on which the tree is located.

(n) Tree. A self-supporting, woody plant, together with its root system, having a well-defined stem or trunk or a multi-stemmed trunk system. "Tree" shall not include trees in containers or nursery stock trees maintained for resale.

(o) Tree Emergency. The existence of any tree within the Village that has become an immediate danger or hazard to persons or property as a result of any tornado, windstorm, flood, freeze, or other natural disaster.

(p) Tree Ordinance Authorization. A written form issued by the village manager pursuant to this Article allowing construction activity to proceed without any impact on, damage to or removal of any protected tree or heritage tree in the Village.

(q) Tree Permit. A permit required by this Article II that must be issued prior to the impact on, damage to, or removal of any protected tree or heritage tree in the Village.

(r) Tree Permit Application. An application that must be filed pursuant to Section 34-12 of this Article.

(s) Village Manager. The individual appointed as village manager pursuant to this Code, or his designee.

Sec. 34-11. Tree Permit or Tree Ordinance Authorization Required.

(a) General. Except as expressly provided in subsection (b) of this Section 34-11, no person shall commence any construction activity without first obtaining a tree ordinance authorization or a tree permit from the village manager.

(b) Tree Emergency Exception. In the case of a tree emergency, the village manager is hereby authorized to (i) issue a tree permit without a tree permit application, (ii) waive the requirement for a tree permit, or (iii) waive any of the other regulations of this section or this Article II. Notwithstanding any other regulations of this Article II, if a tree emergency occurs, the person endangered by the tree emergency may take any reasonable action necessary to avoid or eliminate the immediate danger or hazard. The action

taken shall be an action that is least likely under the circumstances to cause impact on, damage to, or removal of any trees, and the Village assumes no responsibility or liability for any such action taken. The person taking such action shall document the reasons for the tree emergency by photography or videotape of the tree emergency condition and the danger or hazard created by such condition, and shall report the action taken to the village manager within forty-eight (48) hours after the action is taken.

Sec. 34-12. Tree Permit Application Contents.

A tree permit application shall be submitted to the village manager on a form provided by the village manager setting forth or otherwise providing the information described in this Section, concurrent with the submission of any permit application for, and prior to commencement of, any construction activity:

- (a) The name and address of the applicant;
- (b) The owner's name and address, and the owner's signed consent to the application if the applicant is not the owner;
- (c) The street address or legal description of the lot on which the construction activity will occur and the lot or property on which the protected tree or heritage tree is located, if different;
- (d) A description of the size (DBH), genus, species, and condition of the protected tree or heritage tree to be damaged or removed;
- (e) A brief explanation of the reasons necessitating impact on, damage to, or removal of the protected tree or heritage tree, or a statement certifying that no impact on, damage to, or removal of a protected tree or heritage tree will occur;
- (f) A construction activity protection plan, if applicable, in accordance with Section 34-20 of this Article II;
- (g) A description or depiction of the size and location of any utility facility located, or proposed to be located, on the lot or any adjacent property; and
- (h) Such other data and information as the village manager shall deem necessary to allow full and fair consideration of the tree permit application.

Any person submitting an application for a permit or approval to perform any work pursuant to codes and ordinances of the Village or other law may be required to certify that the work under such permit or approval is not construction activity under this Article II. In the event that any such certification is found by the village manager or building commissioner to be untrue or

incorrect, all work included in such permit or approval may be stopped until an application is filed pursuant to this Article II and any appropriate permits or authorizations are issued by the Village.

Sec. 34-13. Tree Permit and Tree Ordinance Authorization Fees.

(a) Permit Fee Required. No tree permit shall be issued pursuant to this Article II unless a tree permit fee is paid by the applicant. The tree permit fee shall be in the following amounts for the following types of construction activity, or such other amounts as may be established by the Village Board from time to time by resolution duly adopted:

<u>Type of Construction Activity</u>	<u>Fee Amount</u>
Lot Redevelopment With Demolition	\$700.00
Lot Redevelopment Without Demolition	\$600.00
Demolition Without Building Permit	\$425.00
Lot Improvements	
Room Additions	\$425.00
Driveways	\$300.00
Pools, Tennis Courts, and Basketball Courts	\$350.00
Fences, Sheds, and Similar Accessory Structures	\$200.00
Decks and Patios	\$200.00
Irrigation Systems	\$200.00
Tree Removal with No Other Associated Activity	\$100.00

(b) Exception to Fee Requirement. No tree permit fee shall be required if the tree permit application seeks to impact, damage or remove a tree that is (i) dead, diseased, insect infected, or otherwise unsafe and a hazard to persons, property, or other trees; (ii) in dangerous proximity to any public utility line or related facility; or (iii) necessary to comply with established good forestry practices.

(c) Tree Ordinance Authorization. No fee shall be assessed for the issuance of a tree ordinance authorization.

Sec. 34-14. Review of Tree Permit Applications; Permit and Authorization Issuance.

(a) On-Site Inspection. Upon receipt of a complete tree permit application, the village manager shall visit and inspect the lot and contiguous and adjoining lots in order to evaluate the tree permit application, and, where necessary as determined by the village manager, provide an on-site consultation with the applicant to (i) review the tree permit application, and (ii) suggest alternatives that may be less likely to result in impact on, damage to, or removal of, or otherwise minimize impact on or damage to, a protected tree or heritage tree.

(b) Tree Permit for Protected Trees Not in a Required Yard. If the protected tree is not located in a required yard of a lot, the village manager shall approve a tree permit application and issue a tree permit immediately after the on-site consultation.

(c) Tree Permit for Protected Tree in a Required Yard. No tree permit shall be issued for a protected tree located in a required yard of a lot, unless the protected tree to be removed or damaged is replaced in accordance with Sections 34-18 and 34-19 of this Article II.

(d) Tree Permit for Heritage Trees Anywhere on a Lot. No tree permit shall be issued for a heritage tree located anywhere on a lot unless the heritage tree damaged or removed is replaced in accordance with Sections 34-18 and 34-19 of this Article II; provided, however, that no application for any permit involving any exterior construction activity or the demolition, removal, or addition of fifty percent (50%) or more of (i) the floor area of any building or buildings on the same lot, or (ii) the structural elements of the walls or façade of a building or buildings on the same lot, shall be accepted by the Village for any lot within one year following the issuance of a tree permit for the removal of a heritage tree on the same lot unless such tree permit was issued because the heritage tree was dead, diseased, insect infected, or otherwise unsafe and a hazard to persons, property, or other trees or in dangerous proximity to any public utility line or related facility.

(e) Tree Ordinance Authorization. Whenever the village manager determines that the construction activity contemplated in connection with a tree permit application will not have any impact on, or will not damage or remove, any protected tree or heritage tree on the lot, the village manager shall issue the applicant a tree ordinance authorization. Any pruning or other work under such authorization shall be consistent with national pruning standards.

Sec. 34-15. Time Limitation on Tree Permit and Tree Ordinance Authorization.

A tree permit or tree ordinance authorization issued under this Article II shall expire and become null and void if the work authorized is not commenced within six (6) months from the date of issuance, or if such work is suspended or discontinued for a period of six (6) months.

Sec. 34-16. Denial of a Tree Permit.

If the tree permit application, inspection of the lot, on-site consultation (where necessary), and consideration of all other reliable and relevant information reveal that the applicant has not justified impacting, damaging or removing a protected tree or heritage tree to the satisfaction of the village manager, then the village manager shall promptly notify the applicant that the tree permit application is denied and that no tree permit shall be issued.

Sec. 34-17. Appeals.

Any applicant, owner of the lot on which construction activity is proposed, or owner of an affected protected tree or heritage tree aggrieved by a decision of the village manager in the enforcement of any terms or provisions of this Article II may appeal the decision by filing a written notice of appeal with the Village Clerk within ten (10) days after the date of the village manager's decision. Any applicant, lot owner, or tree owner filing an appeal shall have the burden of demonstrating an actual hardship, an abuse of discretion, or an error in interpretation of this Article II. The Village Board shall review the tree permit application and render a decision on the appeal and, in making this decision, may consider any relevant evidence, documents, or information pursuant to rules and procedures that the Village Board may establish from time to time. The decision of the Village Board to affirm, modify, or reverse the village manager's decision shall be final. The Village Clerk shall notify the person who filed the appeal, as well as the applicant, lot owner, or the owner of the affected tree if different than the party filing the appeal, of the Village Board's decision on the appeal within five (5) days after such final action. No work shall be performed involving the affected protected tree or heritage tree prior to issuance of notice of the Village Board's decision on the appeal.

Sec. 34-18. Tree Replacement.

(a) Tree Replacement Required. Except as expressly provided in subsection (d) of this Section 34-18, and except where payment in lieu of replacement is expressly authorized by Section 34-19 of this Article II, tree replacement shall be mandatory for the damage or removal of any protected tree that is located in a required yard of a lot, and for the damage or removal of any heritage tree located anywhere on a lot, according to the following tree replacement rate:

(i) The replacement of protected trees shall be such that the sum of the DBH inches of the new trees shall be one (1) inch or more for each one (1) inch of DBH of the protected trees that have been damaged or removed.

(ii) The replacement of heritage trees shall be such that the sum of the DBH inches of the new trees shall be two (2) inches or more for each one (1) inch of DBH of the heritage trees that have been damaged or removed.

(b) Replacement Trees. All replacement trees shall be in good health, structurally sound, and of appropriate genus, species, variety, and cultivar, and shall be planted in accordance with good construction practices and current standards generally observed by professionals in the forestry, landscaping and landscape architecture professions. The Village Board, by resolution duly adopted, shall establish a list of trees of appropriate or inappropriate genus, species, varieties and cultivars under this Section. No individual replacement tree may be less than three (3) inches DBH. Any replacement tree that dies or becomes diseased within one (1) year following the date of planting shall be replaced by the applicant at the applicant's sole expense.

(c) Replacement Schedule. All tree replacements must be made pursuant to a written time schedule submitted by the applicant and approved by the village manager.

(d) Exception to Replacement Requirement. The village manager shall have the authority to authorize an exemption from the replacement requirements and payment in lieu requirements otherwise applicable under this Article II:

(i) if the village manager determines that the protected tree or heritage tree to be damaged or removed is dead, diseased, insect infected, or otherwise unsafe and a hazard to persons, property, or other trees;

(ii) if the village manager determines that the protected tree or heritage tree to be damaged or removed is in dangerous proximity to any public utility line or related facility; or

(iii) where the village manager determines that removal of the tree is consistent with good forestry practices and an exception for replacement trees is necessary to comply with good forestry practices.

Sec. 34-19. Payment in Lieu of Replacement.

(a) When Applicable. If the applicant determines that there is insufficient space on the lot to allow for the planting of all replacement trees, or replacement at the required rate would otherwise be inconsistent with the current standards generally observed by professionals in the forestry, landscaping, and

landscape architecture professions, the village manager shall charge a fee in lieu of some or all of the replacement trees otherwise required under this Article II.

(b) Amount. The fee to be charged in lieu of replacing any protected tree shall be equal to \$200.00 per DBH inch. The fee to be charged in lieu of replacing any heritage tree shall be equal to \$400.00 per DBH inch. These fees may be adjusted by the Village Board from time to time by resolution duly adopted.

(c) Use of Payments in Lieu. The proceeds of any fees collected under this Section 34-19 shall be used for the planting of trees on public parkways or other public properties in the Village. Where consistent with good forestry practices, the fees collected for a particular lot shall be used for replacement trees within the block or blocks on which the lot is located or on the block or blocks on the opposite side of the street or streets on which the lot is located.

Sec. 34-20. Construction Activity Protection Plan.

(a) Plan Required. A construction activity protection plan shall be filed with all tree permit applications in which construction activity will occur, regardless of whether such tree is located on the lot on which the construction activity is proposed; provided, however, that no plan will be required for the removal of a protected tree or heritage tree that will not or is not reasonably likely to cause impact on, or the damage or removal of, another protected tree or heritage tree. Such plan shall ordinarily be submitted contemporaneously with a building permit application, but in no event shall a building permit be issued without such a plan being submitted and approved.

(b) Contents of Construction Activity Protection Plan. A construction activity protection plan shall consist of a site plan of the lot, of a scale no less than one (1) inch equals ten (10) feet, on a topographic map if deemed necessary by the village manager, upon which shall be graphically and accurately marked all the following information:

- (i) Existing and proposed contours of the lot on which the construction activity is to take place.
- (ii) Building elevations, if applicable.
- (iii) The name of the general contractor or project representative, if any, responsible for the proposed construction activity.
- (iv) The existing and proposed shrubs and landscaping other than trees.
- (v) A legend referencing the DBH, genus and species, general condition, and proposed disposition of existing protected trees and

heritage trees that are located on or near the lot, and any other trees that are reasonably likely to be impacted, damaged or removed during the construction activity.

(vi) Identification of the root zone perimeter of all trees to be preserved during the construction activity.

(c) Tree Protection Measures. The village manager may condition any tree permit on the inclusion of protective measures in a construction activity protection plan that will serve to minimize the extent of impact on, damage to, or removal of trees. Such measures may include, without limitation, one or more of the following:

(i) The installation of chain link fencing or other sturdy barrier at least four (4) feet in height anchored to metal posts shall enclose, to the extent that the root zone is located on the lot, the entire root zone of any tree to be preserved during construction activity. All required fencing shall be installed prior to the issuance of building permit, and shall remain in place until the completion of the construction activity.

(ii) Restrictions on trench digging or movement of equipment within the root zone of any tree to be preserved during construction activity.

(iii) Restrictions on the storage of equipment, excess soil, materials, liquids, or construction debris within the root zone or the driving of any vehicle over the root zone of any tree to be preserved during construction activity.

(iv) Restrictions on affixing to trees any attachments, fences, or wires, other than those approved for bracing, guying, or wrapping.

(v) Restrictions on the removal of soil from within the root zone of any tree to be preserved during construction activity.

(d) Exceptions. The village manager may waive any requirement of this Section 34-20 where the village manager determines that the construction activity is minimal in nature and will not or is not reasonably likely to cause impact on, damage to or removal of a protected tree or heritage tree.

Sec. 34-21. Security.

The village manager shall require an applicant for a tree permit to provide the village with a letter of credit, bond, or cash deposit to secure the tree replacement obligations required pursuant to Subsection 34-18 of this Article II or the tree protection measures required pursuant to Section 34-20(c) of this Article II, where the amount of the security as determined under this Section is \$5,000.00 or more. The amount of the security shall be determined by the village manager

and shall be equal to the total cost of the required replacement trees based on the formula set forth in Subsection 34-19(b) or the total cost of strictly complying with and fully implementing the tree protection measures, as the case may be. If the village manager determines that the applicant has neglected or refused, following written notice, to comply with the tree replacement obligations or to implement the tree protection measures, as the case may be, the village manager is authorized to perform or to cause to be performed the work and to apply an amount equivalent to the actual costs of the work from the security. Upon completion of the tree replacement or the tree protection measures, as the case may be, the security, or any remainder thereof, shall be returned or released to the applicant.

Sec. 34-22. Penalties and Fines.

(a) Damage or Removal. Any person who damages or removes a protected tree or heritage tree in violation of this Article II shall be subject to a fine of not less than \$750.00 per violation, with every damaged or removed tree constituting a separate violation. In addition to the applicable fine, any damaged or removed trees shall be replaced in accordance with the requirements set forth in Sections 34-18 and 34-19.

(b) Other Violations of this Article. Any person who violates any other provision of this Article or any of the specific construction activity protective measures set forth in Section 34-21 shall be fined not less than \$100.00 for the first violation, \$200.00 for the second violation, and \$300.00 for any successive violation within the same twelve (12) month period. Where impact on, damage to, or removal of a protected tree or heritage tree is reasonably likely to occur that has not been authorized under this Article, a stop work order may be issued in addition to a citation for the violation, and all work at the site must cease. Once the violation has been abated and a \$500.00 stop work fee has been paid to the Village to cover the cost of administrative processing, the Village shall release the stop work order within two (2) business days, at which time work may resume. For purposes of this provision, a person shall be deemed to have violated these regulations whenever that person, or any contractor, subcontractor, agent, or employee of that person, shall have violated these regulations.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take full force and effect on October 22, 2005, following its passage, approval, and publication in the manner provided by law.

PASSED this 11th day of October, 2005.

AYES: (6) Trustees Wilson, Laier, Bossu, McGinnis, Miller and White

NAYS: (0)

ABSENT: (0)

ABSTAIN: (0)

Village President

ATTEST:

Village Clerk

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