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## Petition text

### Petition to Improve Tree Preservation Practices in the City of Delaware

In light of the 2019 iTree study regarding Delaware’s tree canopy, we need an immediate change in regards to how we protect our trees in order to stop the rapid decline of our tree canopy. Therefore, we ask the Shade Tree Commission and City Council to do the following:

1. Support an Ordinance or Resolution by Council to require adherence to the Codified Ordinances of Delaware, Ohio, Chapter 1168 in all development, including Planned Mixed Use developments (PMUs). This Chapter should be observed in its entirety. You will note that those who wrote and adopted this code established the inclusion of tree preservation in all zoning text via section 1168.02(a): **“This chapter shall apply to trees** that have a minimum six-inch diameter at breast height (DBH), also known as major trees, on all public and private properties, **in all zoning districts**, unless exempted below.”<sup>1</sup> In addition to 1168.02(a) that is quoted above, the Delaware City Code sections in 1168.01(c) and 1168.02(b)(3) further underscore the importance of tree preservation as it relates to all new development and construction in the City of Delaware. By practice, PMUs have been exempted from following this ordinance; such exemption should end immediately, and all development that has not completed its final approvals from the date of this petition henceforth shall once again be held to the standards found in Chapter 1168 of the Codified Ordinances of Delaware, Ohio.
2. Require an iTree study of all future developments be completed by the applicant, for review by the Shade Tree Commission to make suggestions for tree preservation using data from the iTree study as well as the required tree surveys, and such suggestions shall be reviewed by Council in a stated public meeting before they approve the related development plan. This will bring our practices more in alignment with the stated tree preservation goals of the City of Delaware, including the Shade Tree Commission's stated goal of increasing the City’s tree canopy to 30-40% as well as Delaware’s status as a Tree City USA.

<sup>1</sup> Emphasis added. Available at [https://library.municode.com/oh/delaware/codes/code\\_of\\_ordinances?nodeId=PTELEVENPLZOCO\\_TITELEVENPLZOCO\\_CH1168\\_TRPRRE](https://library.municode.com/oh/delaware/codes/code_of_ordinances?nodeId=PTELEVENPLZOCO_TITELEVENPLZOCO_CH1168_TRPRRE). Exemptions are listed in 1168.08: “(a) The tree is dead, damaged, or diseased. (b) The tree is an undesirable species in its present location, as determined by the Director of Grounds and Facilities (or designee). [or] (c) The tree poses potential danger to life or property.”

3. Change the City's requirements for tree replacement as found in Code 1168 to better capture the total tree canopy lost. Create new requirements that would acknowledge the value of slow-growing trees and typical layers of tree growth in forests that also contribute to our tree canopy; such trees may be smaller than the currently required 6 caliper inches diameter at breast height, but they play a vital role in a healthy tree canopy. Reduce the required tree replacement size to 1.75 caliper inches. Request an annual study of best practices in tree preservation and assessment for replacement, and prepare new guidance according to what is learned in this annual review.
4. Support the City's immediate attention to the *Delaware Together* comprehensive plan goals noted below. Specifically, make goal E3.5 "Consider a natural resources zoning overlay district" a high priority item. Additionally, until such time as all of these goals can be fully implemented by our City and documented into our official planning documents and codes, all applicants for development should be required to provide statements explaining how their development plan supports these stated goals for the City of Delaware:
  - a. E2.4 "Revise and improve open space / parkland dedication requirements for new development";
  - b. E2.9 "Identify new urban natural area opportunities."
  - c. E3.3 "Ensure species habitat protection measures";
  - d. E3.4 "Prepare a detailed inventory and analysis of natural resources";
  - e. E3.5 "Consider a natural resources zoning overlay district";
  - f. E4.1 "Maintain and adjust standards for the city's tree canopy";
  - g. E4.2 "Prepare an urban forest plan";
  - h. E5.1 "Maintain forest buffers along identified streams and tributaries" including a better definition of what constitutes maintaining a buffer; and
  - i. E5.2 "Adopt stronger standards to minimize impervious surfaces."

Our continued growth as a city cannot be at the expense of all of our natural resources. We need swift action to preserve our tree canopy. As it says in Code 1168.01(a): "The benefits derived from tree preservation and replacement include: (1) Energy conservation; (2) Improved air quality; (3) Reduced noise pollution and light glare; (4) Enhanced habitat for birds and other desirable wildlife; (5) Improved control of soil erosion and moderation of water runoff; (6) Enhanced visual and aesthetic qualities; and (7) Increased property value."

---[end petition text]---

## Examples of tree preservation text from recent PMU development texts:

### 1. Coughlin's Crossing

(page 7-8 of the Coughlin's Crossing PMU development text at <https://tinyurl.com/PMU-Coughlins>)

i) **Tree Removal and Replacement.** A tree survey has been provided that documents the total number, type, size, and health of trees to be preserved and replaced according to the survey of open land, preserves and sample areas and verified by the City of Delaware. Tree removal and replacement shall meet all requirements of Chapter 1168 and with the following replacement schedule and fee/replanting requirements:

- i) Trees in poor condition shall not be replaced.
- ii) Trees in fair condition shall be replaced at 50%.
- iii) Trees in good condition shall be replaced at 100%
- iv) Ash trees shall not be replaced and must be removed from the site.
- v) For any permanently preserved tree areas replacement credit shall be granted based on the submitted and verified survey and the schedule above.
- vi) **Tree Replacement Fee / Replanting** – Based upon the submitted and verified survey, the net difference in caliper inches between trees removed and trees permanently preserved in the verified tree survey is 4,072 and the following replacement and/or payment schedule shall apply:
  - (1) The 4,072 caliper inch deficiency requires a \$407,200 payment in lieu of replacement (\$100 per caliper inch) or replanting on site above that which is required on any Final Development Plan individually or in total.
  - (2) To satisfy this deficiency and facilitate administration of these provisions, the applicant shall pay \$100,000 up front with the first approved final development plan and infrastructure improvements.
  - (3) The balance of \$307,200 (or 3,072 caliper inches of qualifying replacement trees) shall be paid on a per acre basis as the site developments. The preliminary development plan identifies 67.95 net developable acres which would require \$4,521 per acre ( $\$307,200/\$67.95$ ) to be paid as development occurs and as given in the process requirements of this section.

• How MUCH MONEY TO TREE FUND?

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- (4) The process shall be that when each final development plan is approved a fee of \$4,521 per acre of the subject Final Development Plan would be required prior to construction drawing approval of the subject Final Development Plan.
- (5) All the trees planted as required landscaping (street trees, perimeter landscaping, etc.) would not count towards the aforementioned tree replacement balance and as any are required on approved Final Development Plans.
- (6) Any trees planted in excess of any required landscaping would count toward the tree replacement balance per City approval. A running balance shall be kept by the City in both dollars and caliper inches of required replacement for this purpose. When the balance equals zero the tree replacement shall be satisfied so long as the removal of trees is the same as that submitted with the initial verified survey. In the event that additional trees are removed as may be approved with future phases, the fee or replanting caliper inches shall be increased accordingly per the same method as is given in this section.

## 2. Terra Alta

(p.4-7 of the [Terra Alta PMU development text at https://tinyurl.com/PMU-Terra](https://tinyurl.com/PMU-Terra))

- f. **Tree Removal and Replacement.** The Property is a unique development opportunity for the City of Delaware and the Developer. While certain portions of the Property are heavily treed, the Developer working in concert with the City desires to create a high-quality subdivision taking advantage of the topography of the site while saving as many trees as possible. At the preliminary development plan stage, for planning purposes only, the Developer for purposes of tree removal has assumed clear cutting of Sub-Areas 10,11 and 12 to be developed with condominiums and/or cluster single family homes (patio homes). However, every effort will be made to save as many trees as possible on such condominium/cluster single family home (patio home) parcels, especially on the perimeter of such condominium/cluster single family home (patio home) parcels. It is assumed that at the time of development, certain tree parcels, reserves and preservation easements will be created. It should also be noted that in connection with single family lot development, every effort has been extended to create tree buffers along boundaries and in backyards. Consequently, the following Tree Replacement Plan specific to the overall Terra Alta development and reflective of the diverse and unique site elements which are present at this particular site shall be implemented. The Tree Replacement Plan enumerated herein creates an innovative and unique approach to the issue of saving trees on this particular Property. Instead of focusing on the economics and environmental issues of trees lost to development, this Tree Replacement Plan focuses on efforts to save trees (particularly large, mature trees), providing an incentive to permanently save large, mature trees, compensating for trees lost, and, ultimately, creating a higher quality

development for the City of Delaware than would be expected under a standard subdivision. Notwithstanding the following Tree Replacement Plan, the City acknowledges compliance to date by the Developer with all trees removed or replaced on the Property.

The following Tree Replacement Plan shall be the controlling regulation for the Terra Alta development:

- (1) *Tree Survey.* An estimate of the total number, type, size, and health of trees to be preserved and replaced has been provided according to a set of representative tree survey sites as determined and verified by the City of Delaware and as authorized by the current Zoning Code. Included as Sheets 9-13 of the Preliminary Development Plan is an estimate of overall tree impact based on the Tree Replacement Plan.
- (2) *Calculation of Replacement Trees.* Only trees six (6) caliper inches and greater that are removed in the development of the Property and construction of housing units shall be replaced according to the following schedule:
  - A. Trees considered in good health as determined by a Certified Arborist and verified by the City of Delaware shall be replaced on a 100% replacement schedule meaning every good tree removed shall be replaced with tree(s) that have a total caliper equal to or greater than the total caliper of the tree removed.
  - B. Trees considered in fair health as determined by a Certified Arborist and verified by the City of Delaware shall be replaced on a 50% replacement schedule meaning every fair tree removed shall be replaced with tree(s) that have a total caliper equal to or greater than 50% of the total caliper of the tree removed.
  - C. Trees considered in poor health or ash trees as determined by a Certified Arborist and verified by the City of Delaware shall be exempt from replacement. However, to the maximum extent allowed by local, state, and federal regulations, poor trees and ash trees located in areas that are not required for development shall be left undisturbed on-site provided such trees are not considered hazardous to life or property as determined by the City of Delaware Arborist.
- (3) *Tree Preservation.* The Developer will include a significant amount of tree preservation areas, distributed throughout the Property, which shall be recorded on each individual final subdivision plat as applicable and will be permanently recorded with such. The Preliminary Development Plan notes the tree preservation areas preliminarily contemplated, subject to change with the detailed investigation that occurs with final submission. The City will consider reasonable proposed changes at the time of final submission.
- (4) *Tree Replacement Fee.*
  - A. Single-Family Lots (Sub-Areas 1-9). A \$500 per single-family detached dwelling unit tree replacement fee shall be charged on each single-family detached dwelling unit at the time of building permit application. This fee is to be paid per the usual and customary procedures of the City, which currently requires payment of all required building and zoning permit fees prior to issuance of the permit but

not at the time of application. Assuming approval of 657 such housing units x \$500 = \$328,500 paid to the City specifically for its Tree Fund.

B. Condominium Patio Home and Duplex Units (Sub-Areas 10, 11 & 12). A \$200 per dwelling unit tree replacement fee shall be charged on each condominium, cluster single family home (patio home) or duplex dwelling unit at the time of building permit application. This fee is to be paid per the usual and customary procedures of the City, which currently requires payment of all required building and zoning permit fees prior to issuance of the permit but not at the time of application. Assuming approval of 213 such condominium, patio home and duplex units x \$200 = \$42,600 paid to the City specifically for its Tree Fund.

(5) *Required Trees Not Considered Replacement Trees.* Trees that are required by the Zoning Code, such as but not limited to street trees and front yard trees, shall not be considered Replacement Trees.

(6) *Replacement Tree Criteria.* To receive credit as a Replacement Tree, a tree shall be required to have a minimum caliper of two (2) inches. Evergreen (pine for example) trees shall be calculated as two (2) feet in height equals one (1) inch in caliper with a minimum required height of six (6) feet. For example, a pine tree six (6) feet in height would net three (3) caliper inches of replacement tree credit. Trees meeting this criterion are referred to herein as "Replacement Trees."

(7) *Single Family Home Tree Replacement Requirement.* At the time of construction of each single-family home, the builder shall be required to plant and install two (2) replacement trees on each such lot.

(8) *Condominium, Cluster Single Homes (Patio Home) and Duplex Tree Replacement Requirement.* At the time of construction of each building housing condominium, cluster single home (patio home) or duplex unit, the builder shall be required to plant and install two (2) replacement trees for each condominium unit in each building, cluster single homes (patio home) unit or duplex unit.

(9) *Credit for Tree Preservation.* In recognition of the Developer's efforts to save trees in the design, layout and development of the Property through the provisions of this Tree Replacement Plan, the Developer shall receive credit against the replacement required by Section 2 of this Tree Replacement Plan for all single family home tree replacement pursuant to Section 7, all condominium, cluster single family homes (patio home) and duplex tree replacement pursuant to Section 8, and in accordance with the following schedule for permanently preserved trees:

A. Good Tree Credit Schedule

(1) Trees six (6) caliper inches but less than twelve (12) caliper inches saved shall receive one (1) caliper inch credit for each caliper inch saved.

(2) Trees twelve (12) caliper inches but less than eighteen (18) caliper inches saved shall receive two (2) caliper inches credit for each caliper inch saved.

- (3) Trees eighteen (18) caliper inches but less than twenty-four (24) caliper inches saved shall receive three (3) caliper inches credit for each caliper inch saved.
- (4) Trees greater than (24) caliper inches saved shall receive four (4) caliper inches for each caliper inch saved.

**B. Fair Tree Credit Schedule**

- (1) Trees six (6) caliper inches but less than twelve (12) caliper inches saved shall receive one-half (1/2) caliper inch credit for each caliper inch saved.
  - (2) Trees twelve (12) caliper inches but less than eighteen (18) caliper inches saved shall receive one (1) caliper inch credit for each caliper inch saved.
  - (3) Trees eighteen (18) caliper inches but less than twenty-four (24) caliper inches saved shall receive one and one-half (1-1/2) caliper inches credit for each caliper inch saved.
  - (4) Trees greater than (24) caliper inches saved shall receive two (2) caliper inches for each caliper inch saved.
- (10) *Credit for Removal of Ash Trees.* The removal of ash trees from the Property that would not otherwise be removed as a result of development (i.e., ash trees removed from Reserves and preservation easements) shall be given a credit of one (1) caliper inch for every \$100 cost of ash tree removal as submitted by the Developer and as certified by the City Arborist.
- (11) *Replacement Completion.* Fulfillment of this Tree Replacement Plan as written and in total shall result in no additional "fees-in-lieu" or other tree replacement, tree banking or other payments being required by the City unless the basis of tree removal or preservation is amended through the development process in which the tree replacement plan shall be amended accordingly.
- g. Expiration.** These tree replacement requirements shall expire upon the completion of the entire Terra Alta Subdivision development. The completion of development shall be considered the acceptance of final public improvements and expiration of any required maintenance period for Terra Alta as it relates to the tree replacement aspects of this Tree Replacement Plan, however, the provisions of Sections 4, 5, 6, 7 and 8 shall continue in full force and effect with respect to each dwelling unit until such time as each dwelling unit in the Terra Alta Subdivision receives a Final Certificate of Occupancy. After the completion of development or receipt of a Final Certificate of Occupancy, as applicable, the tree preservation and replacement requirements of the then current Zoning Code shall apply.

### 3. Glen Cannich Village

(Pending vote by Council; p.3 of the [Glen Cannich Village PMU development text](https://tinyurl.com/PMU-Glen) at <https://tinyurl.com/PMU-Glen>)

**Tree Removal and Replacement.** Tree removal and replacement shall meet all requirements of Chapter 1168 according with the following replacement schedule:

- (1) Trees in poor condition shall not be replaced (dead, damaged or diseased).
- (2) Trees in fair condition shall be replaced at 50%.
- (3) Trees in good condition shall be replaced at 100%
- (4) Ash trees shall not be replaced and must be removed from the site, except in the permanently preserved areas.
- (5) Other tree species considered by the City Arborist to be a species of poor quality will be considered as in poor condition with a 0% replacement or preservation value.
- (6) Per the submitted preliminary tree survey with the preliminary development plan, the applicant is removing 5,243 caliper inches of qualifying trees (451 trees).
- (7) Per the submitted preliminary tree survey with the preliminary development plan, the applicant is preserving 6,315 caliper inches of qualifying trees (497 trees).
- (8) Therefore, the applicant is preserving significantly more trees (1,072 caliper inches) than ones being removed and achieves compliance with the intent of Chapter 1168 Tree Preservation Regulations and other recently approved PMU's.
- (9) The schedule above shall be applied to the proposed Final Development Plan and final tree survey for preservation and removal of trees. This shall be done prior to or concurrent with the Final Development Plan submission. Trees permanently preserved shall be given credit based upon their caliper inches per the tree survey and the schedule above calculated against the total caliper inches proposed to be removed (again in accordance with the schedule above and the tree survey). If there still remains a balance of caliper inches due, the developer shall replant this on site in addition to any required or proposed trees, shall make a payment in lieu of replanting these trees at \$100 per caliper inch, or any such combination that achieves a zero balance. Also, if any additional preserved trees are removed during construction, the developer shall replant this on site or shall make a payment in lieu of replanting these trees at \$100 per caliper inch, or any such combination that achieves a zero balance.



#### 4. Addison Farms

(Pending vote by Planning Commission and Council; p.13-14 of the Addison Farms PMU development text at <https://tinyurl.com/PMU-Addison>)

**i) Tree Removal, Preservation and Replacement.** A tree survey is being provided that documents the total number, type, size, and health of trees to be preserved and replaced according to the survey of open land, and preserves in sample areas, which will be verified by the City. Tree removal and replacement shall be in accordance with the following replacement/preservation schedule and fee/replanting requirements:

- i) There will not need to be replaced or a fee paid with respect to (1) trees in poor condition or less than 6 inches in diameter at breast height, (2) trees removed for the construction of any street shown on the Thoroughfare Plan, (3) trees removed for the construction of any multi-use path, (4) trees removed for the construction of the sub-trunk sewer line, (5) trees removed for the construction of regional retention or detention ponds, (6) trees removed for the construction of any mounding required by the Overall Final Development Plan or any Sub-Area Final Development Plan, and (7) trees within the A-1 zoned land removed as part of approved or customary timbering or which could have been removed as part of approved timbering.
- ii) Trees in fair condition shall be replaced at 50%.
- iii) Trees in good condition shall be replaced at 100%
- iv) Ash trees shall not be replaced and must be removed from the site.

Any permanently preserved tree areas shall be granted based on the verified tree survey and the provisions and schedule above. Trees planted as required landscaping (street trees, perimeter landscaping, etc.) will not count towards the aforementioned tree replacement schedule. Any trees planted in excess of the required landscaping under the then-current Zoning Code in any Sub-Area shall count toward the tree replacement schedule, and a running balance shall be kept by the City, in both dollars and caliper inches, for such purpose. When the balance equals zero the tree replacement schedule shall be satisfied so long as the removal and permanent preservation of trees is the same as that submitted with

the verified survey. In the event that additional trees are removed, as may be approved within a Sub-Area, the fee or replanting caliper inches shall be increased accordingly in accordance with this section.

## Excerpts from Chapter 1168

- Re: Tree preservation in all zones
  - 1168.02 Applicability - (a) This chapter shall apply to trees that have a minimum six-inch diameter at breast height (DBH), also known as major trees, on all public and private properties, in all zoning districts, unless exempted below [in 1168.08].
  - 1168.02 Applicability (b)(3) New Development or Construction. No building permit or certificate of zoning compliance shall be issued for any development or the construction of any building, structure or vehicular use without it first being determined through the development plan review process that the proposed development is in conformance with the provisions of this Chapter.
  - 1168.01. - Purpose. (c) To promote the preservation, replacement and/or augmentation of trees that might otherwise be damaged or removed in the course of land development and building construction.
  - 1166.05. - [Landscaping and screening requirements] Tree preservation and replacement requirements. In all districts, trees shall be preserved or replaced in compliance with the provisions of Chapter 1168, unless exempted therein.
- Re: Purpose and intent of 1168 & tree preservation
  - 1168.07 - The intent of replacement of removed trees overall is to maintain an equivalent tree canopy citywide before and after removal/construction.
  - 1168.01. - Purpose. - These regulations are established in order to recognize the vital importance of tree growth in the ecological system, while allowing for reasonable development of lands in the City of Delaware and achieve, among others, the following purposes:
    - (a) To ensure the preservation of existing trees and natural wooded areas and encourage replacement of damaged or removed trees so that City residents may benefit from a healthy urban forest. The benefits derived from tree preservation and replacement include: (1) Energy conservation; (2) Improved air quality; (3) Reduced noise pollution and light glare; (4) Enhanced habitat for birds and other desirable wildlife; (5) Improved control of soil erosion and moderation of water runoff; (6) Enhanced visual and aesthetic qualities; and (7) Increased property value.
    - (b) To promote the preservation and replacement of existing trees and wooded areas in such a manner that the benefits listed in (a) above are realized.
    - (c) To promote the preservation, replacement and/or augmentation of trees that might otherwise be damaged or removed in the course of land development and building construction.
- Re: Exemptions
  - 1168.08. - Exemptions from replacement. The Director of Planning and Community Development may approve the removal of a major tree if one of the following applies. Trees removed under the following conditions are exempt from the replacement requirements of Section 1168.07. (a) The tree is dead, damaged, or diseased. (b) The tree is an undesirable species in its present location, as determined by the Director of Grounds and Facilities (or designee). (Ord. 02-55. Passed May 13, 2002) (c) The tree poses potential danger to life or property.
  - 1168.11. - Flexibility. The standards and criteria in this Chapter establish the City's objectives and the level of tree preservation expected. However, in applying these standards, the Planning Commission, Shade Tree Commission, and City Council may: Exercise discretion and flexibility with respect to the placement and arrangement of required elements to assure that the objectives of this chapter and the proposed development are best satisfied.