

Adopted 10/1/2012

LOCAL LAW 7 OF 2012

AMENDING THE TREE PRESERVATION CHAPTER OF THE CODE OF THE VILLAGE OF IRVINGTON

Be it enacted by the Board of Trustees of the Village of Irvington as follows:

Section 1: Chapter 202, Tree Preservation of the Code of the Village of Irvington, is hereby amended by deleting the current chapter in its entirety and replacing it with the following:

Chapter 202

TREE PRESERVATION

§ 202-1. Legislative intent.

The Village of Irvington finds that the existence of trees within the Village makes a fundamental contribution to the health, safety and general welfare of Irvington citizens and the community at large. Trees, in addition to their aesthetic benefits, are essential to riparian habitat, wildlife, energy conservation, temperature moderation and the healthy ecology of the area; trees help improve air quality and reduce global warming. These benefits to the community and environment increase as trees mature. Maturation of trees protects surface water quality, provides shade, offers windbreaks, controls water pollution by reducing soil erosion and flooding, offers a natural barrier to noise, yields advantageous microclimates and fundamental ecological systems. Trees, together with shrubs, contribute to property values of residential and commercial establishments, and preserve and enhance the natural beauty and appearance of the Village and its historic, non-urban character.

Our community's investment in its tree resources has accrued over many years. This investment can be rapidly squandered by indiscriminate damage to and destruction of trees, especially mature and/or specimen trees and shrubs. Unregulated destruction of trees and unacceptable pruning practices cause barren and unsightly conditions, increase municipal expense to control drainage and soil erosion problems, impair the stability and value of developed and undeveloped property and negatively impact the health, safety, environment, ecosystems and general welfare of the inhabitants of the Village of Irvington.

This ordinance establishes policies, regulations and standards necessary to ensure that the Village will continue to realize the benefits provided by our trees. The

provisions of this ordinance are enacted to:

- A. Control and regulate the indiscriminate cutting and destructive or excessive pruning of trees.
- B. Increase species and age diversity of our tree population to provide long-term stability of the aggregate canopy and ecosystem by requiring re-planting when trees are removed.
- C. Preserve our trees and the non-urban appearance of our Village by encouraging owners of existing homes, vacant lands and commercial parcels to save or replace mature tree species when developing their parcels.
- D. Protect public trees in municipal parks and easements.
- E. Facilitate Village stewardship of air, water, land and living resources, to sustainably protect the environment for the use of this and future generations.

§ 202-2. Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

BUILDING INSPECTOR – Building Inspector of the Village of Irvington or his/her designee.

CERTIFIED ARBORIST – An individual who has obtained knowledge and competency in arboriculture or forestry through an accredited body such as the International Society of Arboriculture (ISA) arborist certification program, the American Society of Consulting Arborists, the New Jersey Society of Certified Tree Experts, the State of Connecticut Department of Environmental Protection or the New York State Cooperating Consultant Forester Program.

CERTIFIED ARBORIST REPORT – A report prepared by a Certified Arborist containing specific information on the tree(s) and/or shrubs to be removed, including, but not limited to: species, size, location, condition, structure, height, crown integrity, crown spread, age, pruning history and presence of pests or disease. The report shall include the arborist’s name, address, business affiliation, certification information and signature.

CRITICAL ROOT ZONE (CRZ) – The area containing the volume of roots necessary for maintenance of tree health and stability. The CRZ is determined as a circle with a diameter calculated from the Diameter at Breast Height (DBH) using the equation: $(DBH \times 1.5) \times 2$, which typically extends beyond the Dripline of the tree (defined below).

DBH (DIAMETER AT BREAST HEIGHT) – A standard measurement of tree size taken by measuring the diameter of the trunk at a height of 4.5 ft above ground level. Guidelines for determining DBH in some of the more complicated situations are as follows:

- A. If the tree has branches, bumps or forks that interfere with DBH measurement, measure below that point and record the height at which DBH was determined.
- B. If the tree is growing vertically on a slope, measure DBH from the uphill side of the slope.
- C. If the tree is leaning, measure DBH in the direction of the lean.
- D. If the tree splits into several trunks close to the ground (i.e. has a multi-stemmed or low-branched habit), the DBH of the tree is the sum of the DBH of each trunk.

DESTRUCTIVE PRUNING PRACTICES – Pruning of a mature tree in ways that are in violation of Best Practices, as defined by the American National Standards Institute Guidelines for Tree Pruning [ANSI A300 Part 1]. Destructive Pruning Practices include, but are not limited to, tree topping, defined as cutting back large diameter branches to stubs, and removal of more than 25% of a tree's canopy.

DOWNED TREE – A tree that has fallen over or is broken and is lying on the ground or on a structure.

DRIPLINE – The outermost limit of the canopy of a tree as delineated by the perimeter of its branches and which, extended perpendicularly to the ground, encloses the tree.

GIRDLING - An activity that removes or injures the bark of a tree trunk, typically extending around much of the tree's circumference.

HAZARDOUS TREE – A tree that exhibits serious defects, that is, obvious and visible signs that the tree is failing and that it presents an imminent threat to the health and safety of persons, property, power lines or places where people gather.

Examples of serious defects include, but are not restricted to, one or more of the following conditions:

- A. Excessive damage by an act of God, usually a weather event such as windstorm, lightning strike or flooding, with major broken branches, split trunk, large cracks or other defects that cannot be corrected by pruning.
- B. Severe cracks in the main stem or in branch unions that penetrate deeply into the wood of the tree.
- C. Advanced decay associated with cracks, branch unions, cavities in the tree or root flares and buttress roots. Evidence of fungal activity including mushrooms, conks, and brackets growing on root flares, stems, or branches can be indicators of advanced decay.
- D. Leaning beyond 45 degrees from vertical with evidence of recent root exposure, soil movement or soil mounding.
- E. Supported solely by the action of another tree or object.

LANDSCAPE PLAN – A drawing of subject property showing the locations, quantities, species, varieties and sizes of trees and/or shrubs to be planted. The plan may also include the locations of existing trees and other landscape features.

PREFERRED SPECIES LIST – A list of tree or shrub species for various sites and conditions, including such characteristics as “under wires”, “native”, “urban/street tree”, maintained by the TPC.

PROTECTED SHRUB -- An established shrub, colony or area of shrubs and brushland that is deemed to include rare or endangered plant species, serves as a visual buffer, or provides important wildlife and/or environmental benefits and services. Such services include, but are not limited to, habitat, native food source, riparian buffer, forest conservation buffer or location on a steep slope.

PROTECTED TREE -- Any of the following:

- A. A tree with a DBH of eight (8) inches or more, regardless of location.
- B. A tree with a DBH of three (3) inches or more located in a Wetland, Watercourse Buffer or Watershed Buffer (as defined elsewhere in Village Code).
- C. A tree with a DBH of three (3) inches or more located on a Steep Slope (as

defined elsewhere in Village Code).

- D. A tree that has been planted as a specific requirement of Site Development Plan approval or as part of a previous Replanting or Restoration Agreement.
- E. A tree of Historic or Unique Value to the Village (as defined herein).
- F. A tree with a DBH of three (3) inches or more designated by the New York State Department of Environmental Conservation as a protected native plant for our region.

PUBLIC PROTECTED TREE – Any of the following:

- A. A tree with a DBH of 8” or more located on lands owned by the Village or land upon which easements are imposed for the benefit of the Village.
- B. A tree, regardless of size, planted in a designated tree well or curbside in the public right of way.

REPLANTING AGREEMENT – A written agreement between the property owner and the TPC specifying types and sizes of trees and/or shrubs to be planted as replacements for those that have been removed.

RESTORATION AGREEMENT – A written agreement between the property owner and the TPC specifying types and sizes of trees and/or shrubs to be planted as replacements for those that have been removed in violation of this chapter.

TPC APPLICATION – A completed form entitled “Tree Removal Permit Application” available from the Village Clerk or the Village website, to be submitted by any party wishing to remove one or more Protected Trees or Shrubs as outlined herein.

TREE OR SHRUB OF HISTORIC OR UNIQUE VALUE -- A tree or shrub with unique or noteworthy characteristics or intrinsic value, including, but not limited to: species, age, location, historical significance, ecological value, or incomparable or irreplaceable aesthetic benefit to the community or environment. Examples include:

- A. “Champion” tree listed on an accredited tree registry, or shown to be of comparable size to such listed tree.
- B. Rare or endangered species on federal or state lists.

- C. Specimen tree or shrub exhibiting qualities such as noteworthy leaf color or shape, peeling bark, floral display, fruit, overall form or habit, unique wildlife habitat support, or rarity.

The TPC maintains a list of Trees and Shrubs with Historic or Unique Value; such list should not be deemed all-inclusive or complete.

TREE PRESERVATION COMMISSION (TPC) – A committee constituted by the Village Board of Trustees composed of volunteers with appropriate expertise to evaluate TPC Applications in accordance with the Irvington Tree Preservation Code and to provide such expertise to the Village Board of Trustees, Planning Board or any other Village officials as requested.

TREE REMOVAL PERMIT – A permit approved by the TPC and duly issued by the Village Clerk or designee pursuant to the terms of this chapter. The permit consists of a written letter acknowledging which trees have been approved for removal and is accompanied by a Permit Sign to be posted publicly. The permit may also include additional compliance requirements such as a Replanting Agreement or Landscape Plan.

TREE RISK ASSESSMENT – A determination of the extent to which a tree is hazardous using an industry-wide rating scale taken from “A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas” published by the ISA. Risk is rated by evaluating the probability of failure of the tree, its size and the targets that could be damaged if it fails. An ISA Tree Hazard Evaluation Form is available from the TPC.

UTILITY DISTRIBUTION LINE VEGETATIVE MANAGEMENT – The procedure by which electrical utility companies manage potential or existing conflict between power lines and vegetation, thereby minimizing tree-related power outages. While most vegetative management involves tree trimming, trees that pose hazards to power lines because of ill health, proximity to the lines or other problems may be determined to be hazardous by the utility’s arborist and be removed.

§ 202-3. Allowable activities.

A Tree Removal Permit is not required for:

- A. Removal of any tree not regulated by this chapter.
- B. Removal of a Downed Tree.

- C. Routine pruning or trimming of a tree to maintain health and natural habit.

§ 202-4. Regulated activities; permit required for removing Protected Trees and Shrubs.

- A. No person, firm or corporation shall purposely, carelessly or negligently cut down any Protected Tree or Shrub, or take any action that will result in the cutting down of any Protected Tree or Shrub unless a Tree Removal Permit is obtained, as provided in this chapter.
- B. Notwithstanding any other provision of this chapter, where Protected Tree or Shrub removal is proposed in connection with any site plan or subdivision application submitted to the Planning Board for approval, Protected Trees or Shrubs may be removed from the affected property only in conjunction with and subsequent to the approval by the Planning Board of a final subdivision plat or final site development plan.

§202-5. Granting of Tree Removal Permits.

- A. Permits for the removal of Protected Trees or Shrubs may be granted under the following circumstances:
 - (1) The Protected Trees or Shrubs are in severe decline, diseased or damaged such that they cannot, or should not, be saved.
 - (2) The removal of the Protected Trees or Shrubs is otherwise necessary due to their health or physical condition, according to good and accepted arboricultural practices. To this effect, a written statement describing the condition of the tree from a Certified Arborist is required as part of the permit application, unless explicitly waived by the TPC.
 - (3) The Protected Trees or Shrubs present an unacceptable risk to the person or property of the owner, to the public, to public property or to the person or property of an adjoining property owner. A Tree Risk Assessment should be performed and documented by a Certified Arborist. Circumstances must be such that defects cannot be remedied by reasonable pruning or cabling of the tree.
 - (4) The Protected Trees or Shrubs are healthy but cause undue hardship by substantially interfering with a permitted and intended

use of the property. No report from a Certified Arborist is required for a healthy tree. However, the applicant should supply a description of the intended use and why the Protected Trees or Shrubs present an undue hardship.

- B. Replanting Agreements: The TPC, as a condition of granting a Tree Removal Permit, may require the applicant to replace any Protected Tree or Shrub that is the subject of the application with one or more new tree(s) or shrub(s), in accordance with tree valuation criteria. (See § 202-11: Tree Valuation.) The Replanting Agreement must be signed by the homeowner before a permit will be issued. A Replanting Agreement may also be required if a cumulative total of ten (10) or more tree removals are requested for a single property within a twelve (12) month period.

§ 202-6. Procedural requirements for Tree Removal Permits.

- A. TPC applications must be made in writing according to rules and regulations set forth by the Village Clerk's office. The permit fee shall be as set from time to time by the Board of Trustees and must be paid upon submission of the application.
- B. Where the removal of five or more trees is planned, a Landscape Plan indicating the species and location of replacement plantings must also be attached to the application.
- C. Applications for Tree Removal Permits shall be referred by the Village Clerk to the TPC, which shall review and decide the applications within 30 days of receiving all required information. Failure of the TPC to respond by the end of the review period results in automatic approval and permit issuance.
- D. The application for a permit gives implicit permission for members of the TPC to enter onto the applicant's property to inspect Protected Trees or Shrubs. No advance notification of inspection visits will be given unless specifically requested by the property owner. Such on-site inspections shall be conducted at a reasonable time of day. TPC members may be accompanied by a Certified Arborist and photos may be taken for purposes of site documentation.
- E. The TPC decision and comments will be provided to the homeowner in writing by the Village Clerk.

- F. If the TPC approves the permit, the Village Clerk will issue both the permit and a permit sign for public posting on the site at a location clearly visible from the street. The sign must be posted at least three (3) business days before tree removal begins. Permits must be available on site for presentation to TPC members, Building Inspector or police upon request while the removal is in progress.
- G. Tree Removal Permits expire six months after the approval date.

§ 202-7. Emergency removal of Protected Trees.

- A. The provisions of §202-6 above shall not apply for the removal of a Hazardous Tree under the following Emergency Procedure:
 - (1) A TPC Application designated as an Emergency Removal is to be filed with the Village Clerk, including required fees.
 - (2) A waiting period lasting until the end of the next business day is required before removal action is taken. This waiting period allows time for one or more TPC members to evaluate the tree and communicate their findings to the Village Clerk. If approved, the Village Clerk will issue a permit. Failure of the TPC to respond by the end of the waiting period results in automatic approval and issuance of a permit.
 - (3) The waiting period may be waived if a Certified Arborist determines that the tree must be removed immediately for safety reasons, and within five business days the Village Clerk is notified in writing that an emergency removal action has taken place. Such notification shall be by means of filing a *post facto* TPC Application, with required fees, containing sufficient documentation of the emergency event, including a statement from a Certified Arborist or other qualified expert and a written explanation of the circumstances and conditions that gave rise to the need for immediate emergency removal, and shall be accompanied by photographic documentation of tree before and after removal.
- B. Removal of a Protected Tree based on an unreasonable reliance on this Emergency Procedure, as determined by the TPC, shall be a violation of this chapter.

- C. The Emergency Procedure will be waived:
 - (1) When a tree is determined to be dangerous by a police officer, firefighter, Public Works official or civil defense official acting in their professional capacity during or in the aftermath of catastrophic events or states of emergency.
 - (2) When tree removal is determined to be necessary by fire department personnel actively engaged in fighting a fire.

§ 202-8. Prohibited activities.

No person, firm or corporation shall purposely, carelessly or negligently take any action that will result in killing, destroying or significantly degrading the immediate or long-term viability of any Protected Tree or Shrub. Such actions include, but are not limited to:

- A. Removal of a Protected Tree or Shrub without a permit.
- B. Destructive Pruning Practices.
- C. Use of climbing spikes, nails or hooks, except for the purpose of total tree removal in compliance with the requirements of this chapter.
- C. Girdling or partial girdling or other significant bark damage.
- D. Compaction of CRZ due to construction or other activity. Disallowed activity within the CRZ includes: traversal, access or parking by construction vehicles; manual construction activities excluding landscaping (unless specifically authorized by an approved site development plan); excavation and stockpiling of materials.
- E. Installation of impervious surfaces over more than 25% of root zone.
- F. Severing or trenching through more than 25% of the root zone.
- G. Grade change exceeding three (3) inches within the CRZ.
- H. Poisoning in any manner.

§ 202-9. Public Protected Trees; Utility Distribution Line Management.

- A. Public Protected Trees may be removed only by a Village department or agency, or by a firm or individual retained or duly authorized by the Village. Removal of or damage to a Public Protected Tree by any other person, firm or corporation is a violation of this chapter.
- B. A TPC application is not required for the Village to remove a Public Protected Tree, but notification of nearby property owners shall occur before a Public Protected Tree is removed (except in cases of emergency) by posting a sign on the subject tree(s) for a period of at least three business days before removal. Information such as an arborist report and any test results leading to the Village Department's decision for tree removal shall be made available to Village residents upon request. Documentation of Public Protected Trees that have been removed shall be forwarded to the TPC.
- C. In the case of tree removal as a part of Utility Distribution Line Vegetation Management, performed by the utility company's contractors, TPC applications and permit signs are not required. A list of trees slated for removal by the utility shall be forwarded to the TPC before tree removal begins.

§ 202-10. Penalties for violations.

- A. Fines. Any person, firm or corporation that removes or causes to be removed Protected Trees or Shrubs without first obtaining the required Tree Removal Permit, or who causes irreparable damage to a Protected Tree in accordance with this chapter, or otherwise violates this chapter shall be guilty of a violation and upon conviction may be subject to fines including:
 - (1) Mechanical damage to a Public Protected Tree, such as knocking over, breaking or uprooting the tree, bark tearing, limb breakage, tree well damage or damage to the tree roots caused by a vehicle: up to \$500 per violation.
 - (2) Violations affecting a Protected Tree or Shrub or Public Protected Tree: up to \$500 per violation.
 - (3) Violations affecting a Protected Tree or Shrub within a conservation easement, wetland, watercourse or designated buffer

area: up to \$1,000 per violation.

- (4) Violations affecting a Tree or Shrub of Historic or Unique Value: up to \$2,000 per violation.
- (5) Other violations of this chapter: up to \$2,000 per violation.
- (6) Fines may be doubled if additional violations occur while an appeal process is pending.
- (7) Each tree or shrub shall be considered a separate violation.
- (8) Both the property owner and the tree removal contractor may be held in violation and fined separately.

B. A Restoration Agreement may be required in addition to any fines associated with the violation.

C. Restoration Agreements. Any person, firm or corporation that removes or causes to be removed Protected Trees or Shrubs without first obtaining the required Tree Removal Permit, or who cause irreparable damage to a Protected Tree in accordance with this ordinance, may be subject to a Restoration Agreement.

- (1) The Restoration Agreement may mandate planting one or more replacement trees or shrubs on the property that are of like quality and size to those removed in violation of this ordinance. If like-sized replacement is not practical, replacement with a specific quantity of smaller-sized trees or shrubs may be required, as determined by an analysis of numbers and types of trees removed. (See § 202-11: Tree Valuation.)
- (2) When on-site restoration is determined by the TPC to be impractical or undesirable, an equivalent monetary value amount may be paid into the Village General Fund.
- (3) To assist the TPC in determining the elements of the Restoration Agreement, the services and reporting of a consulting arborist or horticultural consultant may be required. Fees for consultant services will be the responsibility of, and billed to, the violator.
- (4) Restoration planting shall be completed within 6 months of execution of the Restoration Agreement. The applicant shall

contact the Village Clerk within ten (10) business days after restoration work has been fully completed so that a final site inspection can be carried out. If seasonal planting requirements prevent the timely completion of restoration, the timeline may be extended by the TPC or the Building Inspector.

- (5) No Certificate of Occupancy shall be issued by the Building Inspector until the restoration work is completed to the reasonable satisfaction of the Building Inspector, subject to conditions as he shall prescribe.
- (6) If trees included in the Restoration Agreement fail to survive for a period of two calendar years following planting, they shall be replaced by the property owner with identically specified plants unless a modification of the Restoration Agreement is obtained via TPC review and approval. Said replacement shall be within 60 days following written demand from the TPC for such replacement, or within an extended period of time as may be specified. Should the property owner fail to replace the trees pursuant to demand within the required period of time, they may be subject to penalties as set forth in this chapter.

D. Bond Requirement. A bond to be approved by the Village Attorney may be required by the TPC in support of the Restoration Agreement to guarantee its expeditious fulfillment or to ensure that the new plantings are maintained for a period of two years. Failure to meet the agreed-upon plant sizes and species, timeline or maintenance requirements may result in forfeiture of the bond.

§ 202-11. Tree valuation.

- A. In the case of non-violation conditions, Tree Valuation is defined as “equivalent diameter inches”, i.e. a 20” DBH tree would be deemed equivalent to up to 20” caliper of replacement trees. Replacement trees are suggested by the TPC based upon the Preferred Species List. The numbers, sizes and types of trees required for replacement will be specific to each situation.
- B. In the case of violation conditions, or to determine any bond requirement, the Tree Valuation calculation may include a dollar value estimate for trees that were too large to be replaced directly. This is achieved using the industry standard “trunk method” formula written by the Council of

Tree and Landscape Appraisers. This formula takes into account four key factors: size, species, condition and location.

§ 202-12. Appeals.

Any person or entity that is the subject of any decision under this chapter may appeal such decision by notifying the Village Clerk and scheduling a meeting with the TPC. If the issues cannot be resolved, further appeal can be made to the Village Board of Trustees by giving written notice of such appeal to the Village Clerk. The decision of the Village Board of Trustees on any such appeal shall be deemed to be the final decision of the Village of Irvington.

§ 202-13. Tree Preservation Commission.

- A. The Village Board of Trustees hereby creates a Tree Preservation Commission (TPC), which shall consist of no fewer than five members to be appointed by the Board for two-year terms, and no more than three such terms shall expire in any single year. TPC members shall be Village residents and shall have general knowledge of trees and shrubs and their planting and maintenance. TPC members shall receive no compensation for their services. A Chairperson shall be selected by the TPC and approved by the Board of Trustees.
- B. Responsibilities and duties of the TPC shall include:
 - (1) Site visits to evaluate the conditions of trees and shrubs subject to TPC applications.
 - (2) Permit approval or disapproval based on their findings.
 - (3) Specification of Replanting or Restoration Agreements.
 - (4) Review and documentation of violation conditions.
 - (5) Participation in the appeal process as outlined herein.
 - (6) Education of Village residents about tree preservation, tree risk assessment, appropriate tree choices for given site conditions and any other aspects of tree stewardship.
 - (7) Advising Village boards, committees or departments on

tree-related matters.

- (8) Reviewing Site Development Plans or Environmental Impact Statements upon request by the Planning Board.
- (9) Consulting with the DPW regarding utility vegetation management or street tree issues.

- C. The TPC shall meet monthly or as often as necessary in a public meeting to conduct pertinent business and shall act promptly on applications and appeals. All procedural determinations and decisions made by the TPC shall be by a majority vote; in an emergency determinations can be made by the Chairperson. Determinations of the TPC shall be final, except that they shall be subject to an appeal process, as provided herein.
- D. The TPC is authorized and empowered to obtain the advice of persons qualified by reason of professional training in the growing and maintaining of trees and shrubs upon prior approval of anticipated costs by the Village Administrator.

Section 2: All ordinances, local laws, and parts thereof inconsistent with this local law are hereby repealed.

Section 3: This local law shall take effect upon filing with the Secretary of State.