

## **Chapter 21A, TREES**

### **Section 21A-1. Findings and Purpose.**

The Village of Tuckahoe has a vital interest in the planting and preservation of trees within its borders. Trees provide necessary shade, green space and aesthetic appeal; they impede soil erosion, inhibit excess runoff and flooding, reduce air pollution, aid in mitigating noise, and provide other environmental benefits. The uncontrolled destruction of trees deprives the community of all these benefits. The purpose of this Local Law is to preserve trees and minimize damage and removal, thereby enhancing the health, property values and general welfare of the residents of the Village of Tuckahoe.

### **Section 21A-2. Definitions.**

**ACTUAL ONGOING EMERGENCY CONDITION** – a condition in which severe weather, storms, natural or non-natural causes severely affect the integrity of a tree and such condition poses an immediate threat to life, property or the general public.

**CALIPER** – the diameter of a tree trunk measured at a point 6 inches above the root crown or as defined by the American Nursery Association (ANA).

**CERTIFIED ARBORIST** – an arborist or firm certified by the International Society of Arboriculture or another nationally recognized arboricultural organization.

**DBH (Diameter Breast Height)** – the diameter of a tree measured at a point 4-1/2 feet above ground level at the base of the tree on the uphill side.

**HERITAGE TREE** – a tree designated by the Village with the consent of the owner upon a finding that the tree is unique and/or of importance to the community.

**INJURY TO TREES** – any action, during the course of permitted or nonpermitted work that causes significant damage to a tree that causes or is likely to cause death of the tree.

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**INVASIVE SPECIES** – a non native species that adversely affects the habitats they invade economically, environmentally or ecologically and are listed in the Invasive Plant Atlas of New England (IPANE) as amended.

**PERSON** – any individual, firm, partnership, association or corporation or other legal entity.

**PUBLIC TREE OR SHRUB** – trees, shrubs, bushes on land within the property lines of all streets or avenues, rights-of-way, park areas and/or other property owned by the Village.

**REPLACEMENT TREE** – any tree planted under the provisions of this Local Law or required by a decision of the Building Inspector, Superintendent of the Department of Public Works or the Planning Board. Replacement trees shall not be an invasive species or smaller than three (3) inches in diameter at the time of planting, unless specifically approved as part of a tree replacement plan.

**TREE PRESERVATION FUND** - a fund established by the Village to receive payments pursuant to this Local Law, as well as voluntary donations which are to be used in accordance with this Local Law or to augment the planting of public trees.

**Section 21A-3. Public Trees – Prohibited Acts.**

(a) No person shall knowingly remove, break, injure, deface, kill or destroy any public tree or shrub.

**Section 21A-4. Trees on Private Property – Prohibited Acts.**

(a) No person shall knowingly cut down, kill or otherwise destroy a tree on private property except in accordance with the registration and permit requirements set forth in this Local Law.

**Section 21A-5. Tree Removal on Private Property -- Registration and/or Permit Requirements.**

(a) Trees less than 8 inches DBH:

(1) Removal is permitted with no registration or permit required.

(b) Trees 8 inches DBH or greater:

(1) Removal of one tree per year per residential lot is permitted with two week prior notification to the Building Department. Required notification shall include the size, location, type of tree and reason for removal.

(c) Removal of more than one tree per year measuring 8 inches DBH or greater requires a permit from the Building Department. The fee shall be set by the Village Board and will be posted in the Building Department.

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(d) Removal of trees 20 inches DBH or greater must comply with Village insurance policies.

**Section 21A-6. Granting of Permits.**

(a) The decision by the Building Department in the granting or denial of a permit shall be based upon, but not limited to:

(1) the condition of the tree with respect to disease and safety;

(2) the necessity of the removal for a building project;

(3) the effect of the removal on ecological systems; and

(4) the effect of the removal to other trees on the same or adjoining property.

(b) Factors taken into consideration shall include, but are not limited to:

(1) Whether the location of the tree clearly endangers the health, safety, welfare or property of the general public, the property owner or an adjoining property owner.

(2) Whether the location of the tree prevents compliance with state, county or local standards for sight lines, driveways or intersections.

(3) Whether the location of the tree prevents the property owner from undertaking otherwise approved construction or alteration because the location of the tree substantially interferes with a permitted use of the property and the construction or alteration cannot be reasonably modified to accommodate the tree. Written explanation may be required describing how the tree interferes with construction or alteration, and why the construction or alteration cannot be modified to reasonably accommodate the tree.

(4) Whether the tree, due to death, disease, blight, infestation, storm damage, accident or other condition, causes undue hardship for the

property owner to maintain.

(5) Whether the tree is dead, or so substantially diseased that it constitutes a danger to persons, property or other trees.

(c) The Building Department, at the expense of the applicant, may enlist the services of a certified arborist whenever necessary to make the above determinations.

(d) There shall be no site disturbance and the status quo shall be maintained until such time as a tree removal permit is granted or denied and the appeal process is completed. In no event shall a tree permit be issued for the removal of any tree specifically designated to be saved by the Planning Board, unless said tree is determined to be dead, dying, diseased or hazardous to life or property or as subsequently approved by the Planning Board.

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(e) All building permits that involve exterior work shall show the location of all trees on the plans as defined herein within the area of disturbance, and identify the impact, if any, on any trees on the same or adjacent property. The applicant may be required to furnish sub-division plans, site plans and/or additional information as deemed necessary by the Building Department, Zoning Board or Planning Board.

#### **Section 21A-7. Certificate of Occupancy.**

(a) No certificate of occupancy shall be issued by the Building Inspector until all tree planting and/or associated restoration work is completed to the reasonable satisfaction of the Building Inspector or his designee. In the event that seasonal planting requirements prevent timely completion of all planting and restoration work, the Building Inspector may issue a temporary certificate of occupancy, together with prescribed conditions, including but not limited to a requirement of the posting of a bond in an appropriate amount to ensure compliance.

#### **Section 21A-8. Replacement Trees.**

(a) An applicant may be required, as a condition to granting the application for a permit, to replace any tree which is the subject of the application under conditions specified in the issued permit. Replacement trees shall be at minimum 3 inch caliper. Invasive species shall be prohibited.

(b) Any person who (a) removes or causes to be removed a tree without first obtaining a required permit, or (b) any person who removes or causes to be removed any public tree, may be required by the Village to plant one or more replacement trees. When restoration is determined by the Village to be impractical an additional fine may be imposed in accordance with the Penalties For Offenses section set forth herein. Any such fine will be deposited into the Tree Preservation Fund.

(c) All restoration shall be done in accordance with good and acceptable planting practices. Trees that fail to survive as a result of the restoration work required for a period of two calendar years following planting shall be replaced by the property owner.

#### **Section 21A-9. Emergency Removal.**

(a) Trees on private property: in the event of (a) an actual or ongoing

emergency condition when such immediate tree removal is necessary for the protection or preservation of life and/or property and (b) there is not sufficient time to wait for the granting of a permit, then removal of the tree shall be permitted without the otherwise required authorization.

(b) Public Trees: In the event of an emergency caused by a tree being in a dangerous condition imposing an immediate threat to person or property, any member of the Police or Fire Department, or the Superintendent of the

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Department of Public Works, or the Building Inspector, may authorize the removal of such tree immediately.

#### **Section 21A-10. Responsibilities of Village.**

(a) It is the responsibility of the Village to plant and maintain public trees. The Village may remove any tree which is in an unsafe condition or is harmful to sewers, electric power lines, gas lines, water lines or other public improvements.

(b) The Village shall not remove, top off, or substantially alter the shape of any living tree in the absence of one of the above conditions. Trees that are severely damaged by storms or other causes, or trees under utility wires or other obstructions where pruning practices are impractical, may be exempted from this provision.

(c) Where public trees are to be planted under utility lines, selections shall be made of a species compatible to be planted under power lines and other utilities. This section does not prohibit the planting of public trees by property owners provided that the Superintendent of the Department of Public Works has reviewed and approved such plantings.

#### **Section 21A-11. Responsibilities of Property Owners.**

(a) Any owner of a tree or shrub on private property overhanging any right of way within the Village shall prune the branches so that they do not obstruct the light from any street lamp, or the view of any street intersection, or any traffic control device. Owners shall remove all dead, diseased or dangerous trees or broken limbs which may be unsafe. Should owners fail to comply with this section upon written notification from the Building Department, the Department of Public Works shall have the right to (a) prune any tree or shrub on private property when it interferes with any of the aforementioned obstructions, and (b) bill the owner for the work at a rate to be determined by the Superintendent of the Department of Public Works.

#### **Section 21A-12. Responsibilities of Utility Companies.**

(a) Utilities, or their agents, responsible for maintaining rights of way in the Village shall follow the tree maintenance practices established by the National Arbor Day Foundation.

(b) Trimming of habit shall be in a reasonable manner to protect the health and appearance of the tree. Utilities performing work at street level or below shall take reasonable precautions against inflicting injury to any tree and/or its roots. If a utility proposes to remove any tree, advance permission must be obtained from the Superintendent of the Department of Public Works, except in the event of an emergency when a tree has fallen on a distribution line.

### **Section 21A-13. Designation of Historic Trees.**

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(a) The Superintendent of the Department of Public Works, with the assistance of experts in forestry and arboriculture and the consent of the property owner, may establish a register of historic trees to consist of those trees in the Village determined to be worthy of inclusion because of their age, size or specimen. Trees designated as historic may not be removed unless a certified arborist determines, because of their condition, they are a danger to persons or property or that they are diseased and cannot be saved.

### **Section 21A-14. Appeal.**

(a) Any person who is the subject of a decision under this Local Law, within 10 days of receiving such decision, may appeal to the Village Board of Trustees by giving written notice to the Village Clerk. The decision of the Village Board of Trustees on any appeal shall be the final decision.

### **Section 21A-15. Penalties for Offenses.**

(a) Any person violating any of the provisions of this Local Law shall be fined \$500 for each offense. Each week's continued violation of any provision of this Local Law shall constitute an additional violation and may result in fines of up to \$500 per day. Fines will be deposited into the Tree Preservation Fund.

### **Section 21A-16. Enforcement.**

(a) The Superintendent of the Department of Public Works, the Building Inspector, or their designees are hereby authorized to issue appearance tickets and stop work orders for violations of this Local Law.

### **Section 21A-17. Disclaimer of Liability.**

(a) Nothing contained in this Local Law shall be deemed to impose any liability upon the Village, its officers, committees or employees, nor to relieve the owner of any private property from the duty to keep any tree or shrub on his/her property or under his/her control to prevent it from becoming a hazard, or an impediment to travel or vision, upon any street, park, or public space within the Village.

Section 2. Insofar as the provisions of this Local Law are inconsistent with the provisions of any other local law, the provisions of this Local Law shall be controlling.

Section 3. This Local Law shall take effect immediately.

Section 4. The Village Clerk be and she hereby is directed to enter this Local Law in the minutes of this meeting and give due notice of the adoption of said Local Law to the Secretary of the State of New York.