



VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES AGENDA

MEETING DATE: AUGUST 10, 2021

AGENDA ITEM SECTION: DISCUSSION ITEMS

AGENDA ITEM NO. : 4

AGENDA ITEM: DISCUSSION OF AMENDMENT TO CODE CHAPTER 300-51 – TREE REMOVAL PERMITS

ITEM BACKUP DOCUMENTATION:

1. DRAFT LANGUAGE PREPARED BY TRUSTEE PATINO
2. TOWN OF NEW CASTLE CODE CH. 121-TREE PRESERVATION

DRAFT LANGUAGE PREPARED BY TRUSTEE PATINO

§300-51 XX. Legislative intent.

The Village of Dobbs Ferry finds that the existence of trees within the Village makes a fundamental contribution to the health, safety and general welfare of Dobbs Ferry 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 Dobbs Ferry.

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.

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§ 300-51 XX Definitions.

For the purposes of this chapter, the following words shall have the following meanings, and such definitions shall override any conflicting definitions:

BUILDING INSPECTOR – Building Inspector of the Village of Dobbs Ferry 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.

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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 TC.

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 tree with a DBH of eight (8) inches or more, regardless of location.

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- 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 slope of 25% or greater.
- 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 TC 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 TC 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.

TC 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.

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The TC shall maintain a list of Trees and Shrubs with Historic or Unique Value; such list should not be deemed all-inclusive or complete. Such list shall be subject to periodic review.

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

TREE FUND -- A reserve where penalties are collected to be used [for the purchase and maintenance of trees, shrubs and plants and green spaces] at the discretion and purpose of the Board of Trustees with advice from the Conservation Advisory Board or the Tree Commission.

TREE REMOVAL PERMIT – A permit approved by the TC 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.

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.

§ 300-51 XX. 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.

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§ 300-51 XX. 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.

§300-51 XX. Granting of Tree Removal Permits.

A. Permits for the removal of Protected Trees or Shrubs may be granted under the following circumstances:

- i. The Protected Trees or Shrubs are in severe decline, diseased or damaged such that they cannot, or should not, be saved.
- ii. 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 TC.
- iii. 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.
- iv. 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. If five (5) or more trees (as defined in the Zoning Code, 6 inches or more DBH) are being removed on one lot, then a TC Permit Application shall be required regardless of whether the trees or shrubs are Protected Trees or Shrubs, as

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defined by the code.

- C. Replanting Agreements: The TC, 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 § 300-51: 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.

§ 300-51 XX. Procedural requirements for Tree Removal Permits.

- A. TC 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 TC, which shall review and decide the applications within 30 days of receiving all required information. Failure of the TC 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 TC 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. TC members may be accompanied by a Certified Arborist and photos may be taken for purposes of site documentation.
- E. The TC decision and comments will be provided to the homeowner in writing by the Village Clerk or the TC.
- F. If the TC 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 TC members, Building Inspector or police upon request while the removal is in progress. The tree must be tagged with a red ribbon.
- G. Tree Removal Permits expire six months after the approval date.

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§ 300-51 XX. Emergency removal of Protected Trees.

A. The provisions of §300-51 above shall not apply for the removal of a Hazardous Tree under the following Emergency Procedure:

- i. A TC Application designated as an Emergency Removal is to be filed with the Village Clerk, including required fees.
- ii. 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 TC 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 TC to respond by the end of the waiting period results in automatic approval and issuance of a permit.
- iii. 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 TC 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 TC, shall be a violation of this chapter.

C. The Emergency Procedure will be waived:

- i. 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.
- ii. When tree removal is determined to be necessary by fire department personnel actively engaged in fighting a fire.

§300-51 XX. 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, or five (5) trees or more. Such actions include, but are not limited to:

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- 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.
- D. Girdling or partial girdling or other significant bark damage.
- E. 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.
- F. Installation of impervious surfaces over more than 25% of root zone.
- G. Severing or trenching through more than 25% of the root zone.
- H. Grade change exceeding three (3) inches within the CRZ.
- I. Poisoning in any manner.

§ 300-51 XX. 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 TC 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 TC.
- C. In the case of tree removal as a part of Utility Distribution Line Vegetation Management, performed by the utility company's contractors, TC applications and permit signs are not required. A list of trees slated for removal by the utility shall be forwarded to the TC before tree removal begins.

§ 300-51 XX. 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 shall be

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subject to fines including:

- i. 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.
- ii. Violations affecting a Protected Tree or Shrub or Public Protected Tree: up to \$500 per violation.
- iii. Violations affecting a Protected Tree or Shrub within a conservation easement, wetland, watercourse or designated buffer area: up to \$1,000 per violation.
- iv. Violations affecting a Tree or Shrub of Historic or Unique Value: up to \$2,000 per violation.
- v. Other violations of this chapter, including, but not limited to, the removal or five (5) or more trees without a permit: up to \$2,000 per violation.
- vi. Fines may be doubled if additional violations occur while an appeal process is pending.
- vii. Each tree or shrub shall be considered a separate violation.
- viii. Both the property owner and the tree removal contractor may be held in violation and fined separately.

Such fines shall be directed into the Tree Fund to be used at the discretion of the Conservation Advisory Board or the TC.

- B. 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.
 - i. 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 § 300-51 XX: Tree Valuation.)

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- ii. When on-site restoration is determined by the TC to be impractical or undesirable, an equivalent monetary value amount may be paid into the Village General Fund.
- iii. To assist the TC 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.
- iv. 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 TC or the Building Inspector.
- v. 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.
- vi. 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 TC review and approval. Said replacement shall be within 60 days following written demand from the TC 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 TC 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.

§ 300-51 XX. 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 TC based upon the Preferred Species List. The numbers, sizes and types of trees required for replacement will be specific to each situation.

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- 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.

§300-51 XX. Appeals. [RETAIN EXISTING PROVISION IN CODE]

- A. Applicants may appeal the decision of the Tree Commission, in writing, to the Zoning Board of Appeals. Such written appeal is to be given to the Village Clerk. Said appeal shall state specifically the location of the trees in relation to roads, structures and adjoining properties and shall further state the reasons why the permit application should have been granted. The appeal should refer to the criteria for granting permits noted in Subsection B above. Should the ZBA seek assistance from an outside consultant, all costs thereof shall be borne by the party seeking said appeal.
- B. Appeal of decisions of the Planning Board, Architectural and Historic Review Board, and the Zoning Board of Appeals shall be made according to the standard appeal provisions for those boards and approval processes.

~~§300-51 Tree removal permits.~~

~~A. Applicability. An application for the removal of one or more trees when part of another application, such as a site plan, subdivision, variance or special permit application, shall be considered by the Board having decision-making authority for that application. An application solely for the removal of one or more trees shall be heard by the Tree Commission as follows:~~

~~—(1) Undeveloped lots. Prior to removal of a tree on an undeveloped lot, the property owner shall make application for the tree permit to the Tree Commission, which shall have sole jurisdiction to issue a tree permit based upon the criteria set forth in Subsection B of this section.~~

~~—(2) Developed lots.~~

~~(a) Prior to the removal of any specimen tree or a rare or endangered species tree or significant stands of trees on a developed lot, the property owner shall make application to the Tree Commission, which shall have sole jurisdiction to issue a tree permit based upon the criteria set forth in Subsection B below.~~

~~—(b) If the tree removal involves clear cutting, additional information may be requested by the decision-making body, including but not limited to complete plans (which shall be certified by a recognized tree expert) for the restoration plan~~

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~~of the site after tree removal, drawn to a scale of not less than one inch equals 50 feet, and including the following:~~

~~[1] A description of the anticipated vegetative cover of the tree removal area, including dominant species before and after the tree removal.~~

~~[2] The location of the tree removal area in relation to property lines, roads, buildings and wetlands within 100 feet thereof.~~

~~[3] Additional information as needed or deemed necessary by the decision-making body to evaluate the proposed tree removal in terms of the goals and standards of this chapter.~~

~~—(3) Exemptions. The following activities are permitted without a tree removal permit:~~

~~(a) Removal of any tree not regulated in accordance with this section.~~

~~(b) Removal of any tree in an emergency condition when such immediate tree removal is necessary for the protection and preservation of life or property and there is no time to wait for the granting of a tree removal permit.~~

~~(c) Removal of any tree that has been found to be dead, dying, insect-infested or hazardous by a recognized tree expert.~~

~~(d) Tree pruning that does not damage the basic nature of the tree and which does not reduce the size by more than 1/4.~~

~~**B. Criteria.** The decision to issue a tree permit or otherwise approve tree removal shall be based on all the following criteria:~~

~~—(1) If the presence of the tree would cause hardship or would endanger the public or the person or the property of the owner or of an adjoining owner.~~

~~—(2) If the tree is diseased or threatens the health of other trees or if the protected trees or shrubs are dead or diseased to the extent that they cannot, or should not, consistent with good and accepted arboricultural practices, be saved, or that 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 of a certified arborist, obtained and paid for by the applicant, may be required by the Tree Commission of any applicant who proposes to destroy any protected tree.~~

~~—(3) If the tree substantially interferes with a permitted and intended use of the property.~~

~~—(4) If the removal of the tree will not have an adverse effect on the ecological system.~~

~~—(5) If the removal of the tree would enhance views to the Hudson River or improve other viewsheds as identified in § 300-46D, View protection.~~

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C. Appeals.

~~—(1) Applicants may appeal the decision of the Tree Commission, in writing, to the Zoning Board of Appeals. Such written appeal is to be given to the Village Clerk. Said appeal shall state specifically the location of the trees in relation to roads, structures and adjoining properties and shall further state the reasons why the permit application should have been granted. The appeal should refer to the criteria for granting permits noted in Subsection B above. Should the ZBA seek assistance from an outside consultant, all costs thereof shall be borne by the party seeking said appeal.~~

~~—(2) Appeal of decisions of the Planning Board, Architectural and Historic Review Board, and the Zoning Board of Appeals shall be made according to the standard appeal provisions for those boards and approval processes.~~

Trustee Patino – Further Proposes to Amend Tree Commission section in DF code to “allow for receipt of and administration Tree Fund monies”

EXISTING DOBBS FERRY CODE

Chapter 300 Zoning; Article VI “Tree Commission”

§ 300-21 Intent and purpose, establishment, power and duties.

A. Intent and purpose. Trees in a community provide many unique services and values. Trees recycle air and water, absorb pollution, buffer noise, and provide shade, air cooling, and windbreak protection. They also help control flooding and erosion of topsoil. Trees enhance property values and the beauty of the community as well as provide critical habitat for birds and other wildlife species. There is hereby established in the Village of Dobbs Ferry a Tree Commission to protect the character of Dobbs Ferry as a well-treed village, consistent with its being a "Tree City."

B. Establishment and organization.

(1) In accordance with the findings set forth above, there is hereby established in the Village of Dobbs Ferry a Tree Commission to consist of at least three members appointed by the Mayor, subject to the approval of the Board of Trustees.

(2) One member shall be a Village officer or employee. The other members shall be from the public at large.

(3) Tree Commission members shall serve three-year terms.

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(4) The Mayor shall select one of the members of the Tree Commission to serve as Chairperson, subject to the approval of the Board of Trustees.

(5) In the creation of the Tree Commission, the appointment of members to the Commission shall be for terms so fixed that one member's term shall expire at the end of the Village official year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each official year thereafter.

(6) If a vacancy shall occur otherwise than by expiration of term, the Mayor shall appoint a new member for the unexpired term.

C. Powers and duties. The Tree Commission shall have the following powers and duties:

(1) To adopt rules and regulations for its operation and to follow said rules and regulations in the conduct of its official business.

(2) To advise the Village Board of Trustees and other boards on matters affecting the preservation and protection of significant trees throughout the Village.

(3) To develop and conduct a program of public information in the community to foster increased understanding of proper tree husbandry to protect the health of trees in the Village.

(4) To conduct studies, surveys and inventories of significant trees within the Village of Dobbs Ferry as may be necessary to carry out the general purposes of this chapter.

(5) To seek to coordinate, assist and unify the efforts of private groups, institutions and individuals within the Village of Dobbs Ferry in accord with the purposes of this chapter.

(6) To prepare, print and distribute books, maps, charts and pamphlets in accord with the purposes of this chapter.

(7) To review each application received by the Village seeking approval for the removal of a specimen tree, of a tree with a circumference of six inches or more as measured at a height of 54 inches above the natural grade, or of a stand of trees regardless of size that factor into the landscape of the Village, and to make recommendations concerning the removal and/or the replacement of trees to the Board of Trustees, the Planning Board and/or the Land Use Officer.

(8) To request the opinion of outside experts, including a qualified arborist, to help determine the health of a tree subject to a tree removal application.

(9) To prepare a list of appropriate trees to be planted within the Village, with preference given to indigenous tree types, as well as a list of invasive species that should not be planted within the Village.

FOR DISCUSSION AT 8.10.2021 BOT MEETING

(10) To advise on the replacement of trees lost by age or damage to assure that the new trees planted will be of a species, type and size that will thrive and be appropriate in the specific location, as well as not interfere with view vistas, disturb paved areas and curbs, block visibility at street intersections, or interfere with utility wires.

(11) To advise on tree trimming in an effort to maintain healthy trees with attractive canopies, while also maintaining safety, particularly with utility wires, and valued vistas and views.

(12) To carry out such other duties as may be assigned from time to time by the Board of Trustees.

Chapter 121

TREE PRESERVATION

GENERAL REFERENCES

Zoning — See Ch. 60.

Subdivision of land — See Ch. 113.

Environmental quality review — See Ch. 65.

Wetlands — See Ch. 137.

Streets and sidewalks — See Ch. 111.

§ 121-1. Legislative intent.

The Town of New Castle finds and declares that the preservation of trees within the Town is necessary to protect the health, safety and general welfare of the Town of New Castle because trees provide shade, impede soil erosion, aid water absorption and retention, inhibit excess runoff and flooding, enhance air quality, offer a natural barrier to noise, provide a natural habitat for wildlife, provide screening, enhance property values and add to the aesthetic quality of the community. Trees also can reduce air-conditioning costs by providing shade and can reduce cooling and heating costs by serving as windbreaks, resulting in energy efficiency for the heating of buildings. Trees reduce levels of carbon dioxide and return oxygen to the atmosphere, and buffer views of development. By maintaining the existing character of the Town, they enhance property values and contribute to the significance of historic buildings, structures and places in the Town. Trees serve as an amenity that satisfies residents' psychological and aesthetic needs.

§ 121-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT — A person requesting a tree removal permit from the Town or a person to whom a tree removal permit has been given.

APPROVING AUTHORITY — The Town Environmental Coordinator shall be the approving authority, except that the Planning Board shall be the approving authority for any tree removal permit application that is associated with property subject to a pending site plan, subdivision, special permit or other environmental permit application in accordance with the zoning requirements of the Town of New Castle. The Zoning Board shall be the approving authority for any tree removal permit application that is associated with property subject to a pending special permit application before the Zoning Board that is not subject to any Planning Board permit (e.g., wetland permit, steep slopes permit, stormwater pollution prevention plan).

ARBORIST — An individual who has demonstrated knowledge and competency as evidenced by a current International Society of Arboriculture arborist certification.

CALIPER — The standard for trunk measurement of nursery stock. The caliper of the trunk shall be taken six inches above the ground for up to and including four-inch caliper size, and 12 inches above the ground for trees of larger diameters.

CLEARING — Removal of 10 or more trees in a quarter-acre area on any lot within a calendar year.

CONSERVATION BOARD — The Conservation Board of the Town of New Castle, New York.

CRITICAL ROOT ZONE — The minimum area beneath a tree in a concentric circle centering on the subject tree's trunk with a radius equal in feet to 1.5 times the number of inches of the trunk's diameter at breast height (4.5 feet).

DEAD TREE — A tree that is dead or that has been determined by a certified arborist to be damaged beyond salvaging or in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exist to sustain life).

DIAMETER AT BREAST HEIGHT (DBH) — A standard measurement of trees made at 4 1/2 feet above-ground level on the uphill side.

ENVIRONMENTAL COORDINATOR — The Environmental Coordinator of the Town of New Castle, New York, or the person acting in that capacity, as designated by the Town Board.

ENVIRONMENTAL REVIEW BOARD — The Environmental Review Board of the Town of New Castle, New York.

HAZARDOUS TREE — A tree that possesses a structural defect or one whose location and/or position poses a foreseeable danger to persons or property, as determined by the Town Arborist, or certified arborist in consultation with the Town Arborist.

INJURY — Damage to a tree foreseeably leading to tree death or permanent damage to tree health, including a wound resulting from any activity, including but not limited to excessive pruning, cutting, trenching, excavating, altering the grade, paving or compaction, bruising, scarring, tearing or breaking roots, bark, trunk, branches or foliage or application of herbicide or poisoning. A wound resulting from normal pruning shall not constitute an "injury" for purposes hereof.

PERSON — Any individual person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies and municipal corporations.

PLANNING BOARD — The Planning Board of the Town of New Castle, New York.

REGULATED ACTIVITY — Any activity set forth in § 121-3 hereof.

REGULATED LANDSCAPE BUFFER ZONE — A natural and/or landscaped area consisting of vegetative screening measured from each property line of a residentially zoned property towards the interior of such property as follows:

- A. R-2A One-Family Residence District: 25 feet.
- B. R-1A One-Family Residence District: 15 feet.
- C. R-1/2A One-Family Residence District: 10 feet.
- D. R-1/4A One-Family Residence District: five feet.

REGULATED TREE — A tree subject to regulation in this chapter.

REMOVAL — Any of the following:

- A. Removal of a tree, including substantial cutting so that only the trunk or trunk fragments remain.
- B. Injury to a tree.
- C. Pruning of more than 25% of the crown of a tree within one calendar year.

D. The following are excluded from the definition of removal:

- (1) Tree removal, injury or pruning of more than 25% caused by acts of God or natural occurrences;
- (2) The salvaging, repair and necessary pruning of trees so damaged; and
- (3) The removal of any dead tree caused by such damage.

SELECTIVE CUTTING — The periodic removal of individual trees or small groups of trees from a large area so that the age and size classes of trees within an area are mixed, both in age and diameter, to improve overall sustainability of the forest.

SPECIMEN TREE — A tree with a DBH of 18 inches or larger, and small native or ornamental flowering trees with a DBH of eight inches or larger.

STREET TREE — Any tree growing within the street right-of-way, outside of private property.

STRUCTURAL DEFECT — Any natural occurring or secondary conditions such as cavities, poor branch attachment, cracks, or decayed wood in the trunk, crown, or roots of a tree that may contribute to structural failure.

TIMBER HARVESTING — Any operation in which a landowner or representative of the landowner removes trees for commercial purposes. "Timber harvest" shall include only selective cutting of timber.

TOWN — The Town of New Castle, New York.

TOWN ARBORIST — The Environmental Coordinator of the Town of New Castle shall be the Town Arborist provided the Environmental Coordinator is an arborist as defined in this chapter.

TOWN BOARD — The Town Board of the Town of New Castle, New York.

TREE — Any living woody plant with a DBH of four inches or more.

TREE BANK FUND — A fund to be established and administered by the Town Board providing for the payment of fees as mitigation for removal of trees where tree replacement requirements cannot be met on-site. Refer to § 121-8 for more details regarding Tree Bank Fund.

TREE REMOVAL PERMIT — A permit granted under this chapter, which allows the removal of regulated trees as defined herein.

TREE REPLACEMENT — The number of trees to be replaced as part of the permit requirements for securing a tree removal permit as provided in § 121-6.

TREE REPLACEMENT PLAN (TRP) — A plan that identifies areas where existing trees are to be preserved and where proposed replacement trees are to be planted on a property to meet minimum requirements, as well as methods of tree protection to be undertaken on the site and other pertinent information.

WILDLIFE HABITAT — The arrangement of food, water, shelter or cover and space necessary to ensure the existence and survival of wildlife.

ZONING BOARD — The Zoning Board of Appeals of the Town of New Castle, New York.

§ 121-3. Regulated activities; permit required.

Except as provided in § 121-4, Activities permitted by right, or as otherwise described below, it shall be unlawful to conduct, directly or indirectly, any of the following activities within the

territory of the Town of New Castle, unless and until a tree removal permit shall have been obtained pursuant to § 121-5:

- A. Any clearing.
- B. Within the regulated landscape buffer zone, any removal of a tree with a DBH of four inches or more.
- C. Outside of the regulated landscape buffer zone, any removal of a tree with a DBH of eight inches or more.
- D. Any removal of a specimen tree.
- E. Removal of any street tree within the Town's designated right-of-way.
- F. Work to be conducted on or within the critical root zone of any street tree.

§ 121-4. Activities permitted by right.

The following activities are permitted by right without the requirement of a permit:

- A. Removal of any tree not regulated by this chapter.
- B. Removal of any dead tree, hazardous tree or other tree that creates an actual or ongoing emergency condition. The Environmental Coordinator may request verification and/or photograph documentation, which demonstrates that such tree was dead, hazardous or created an actual or ongoing emergency.
- C. Forest management activities:
 - (1) On property assessed under § 480-a of the Real Property Tax Law and for which a certificate of approval by the New York State Department of Environmental Conservation (NYSDEC) is on file with the Town; or
 - (2) On property participating in any other NYSDEC approved forest management or stewardship program, for which a NYSDEC approved forest management or stewardship plan is on file with the Town, and which is undertaken in accordance with best management practices of forestry accepted by NYSDEC and the provisions of that program or plan.
- D. Any removal of trees to be done by or on behalf of the Town of New Castle.
- E. Any removal of trees required by public entities, agencies or electrical utilities that by operation of law are exempt from the permit requirements of this chapter. All public entities, agencies and electrical utilities shall provide notification to the Town Arborist and to the property owner of property where tree removal will be conducted, prior to the removal of any tree or trees.
- F. Removal of any tree, except any tree in the regulated landscape buffer zone provided in § 121-3B, by a cemetery association regulated by the New York State Division of Cemeteries.

§ 121-5. Permit application process; approving authority.

- A. Any person seeking to conduct or causing to be conducted any activity listed in § 121-3 shall file an application for a tree removal permit for such removal with the approving authority as hereinafter provided, in hard copy and in an electronic file format. Except when the Planning Board or Zoning Board is the approving authority, the application for a tree removal permit shall not be subject to a public hearing. For all applications for removal of three or more trees, notice of the application shall be mailed by the applicant, on a form provided by the Town, by certified mail, return receipt requested, to all property owners of record within 100 feet of the boundaries of the property on which the proposed regulated activity will be conducted. A list of the names to whom notice of the application was sent and proof of such mailing shall be submitted as part of the application for the tree removal permit. The approving authority shall make its determination based upon its inspection of the property and the description of the proposed removal contained on the application. The application shall, at a minimum, include the following information:
- (1) The name and address of the property owner and applicant, if different.
 - (2) The street address and Tax Map designation of the property where the removal is sought.
 - (3) A statement of authority from the owner for any agent making application for a permit.
 - (4) A general description of the proposed removal(s) and purpose.
 - (5) A completed tree replacement plan based on the tree replacement requirements in § 121-6. The approving authority may waive this requirement if it is determined that, because of site constraints, it is impracticable or impossible to replace certain trees, or where the approving authority determines that, because of relevant site planning considerations, tree replacement is not warranted. The approving authority may consider payment of a fee to the Tree Bank Fund to satisfy the unmet portion of tree replacement requirements. A tree replacement plan shall include the following:
 - (a) The location of each proposed replacement tree and the location of each existing tree proposed for removal; and
 - (b) A list of all replacement trees that identifies the species (by common and botanical name), size and quantity.
 - (6) Tree removal permit applications involving any clearing shall also include:
 - (a) An inventory of existing trees proposed to be removed as follows:
 - [1] All existing trees four inches in DBH, located within the regulated landscape buffer zone, and all existing trees eight inches in DBH, located outside of the regulated landscape buffer shall be surveyed for species (common name), size (DBH) and tree condition rating. Trees to be removed shall be listed within table that shows species, size and condition and included with the application form; and
 - [2] Each existing tree in the inventory shall be assessed by a certified arborist as per standards outlined by the International Society of Arboriculture.

- (b) A tree replacement plan submitted in conjunction with any clearing action shall be certified by a professional forester, landscape architect or arborist, drawn to a scale no less detailed than one inch equals 20 feet. The tree replacement plan, in addition to the requirements in § 121-5 above and § 121-6, shall include the following:
 - [1] The location of the removal area in relation to property lines, roads, buildings and wetlands within 150 feet. A copy of the Town-maintained map of the property may be utilized by the applicant;
 - [2] A planting schedule; and
 - [3] Any special planting notes.
 - (c) An explanation as to why a proposed activity prompting the removal cannot be located on a different portion of the site or on another lot under the applicant's ownership and control.
 - (d) Additional information as needed, such as the study of flood, erosions or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary by the approving authority to evaluate the proposed removal in terms of the goals and standards of this chapter.
- B. An application fee and inspection fee in such amounts as are set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended.
 - C. All information relating to a tree removal permit application, including but not limited to the application itself, and additional required materials or information (if any) shall be maintained on file in the office of the Town Building and Engineering Department.
 - D. The approving authority for all applications shall be the Town's Environmental Coordinator, except that the Planning Board or Zoning Board shall be the approving authority for any tree removal permit application that is associated with property subject to a pending site plan, subdivision, special permit or other environmental permit application in accordance with the zoning requirements of the Town of New Castle.
 - E. Applications for tree removal permits under this chapter, except for those submitted to the Planning Board or Zoning Board under § 121-5D, shall be approved, approved with conditions, denied, or returned to the applicant, requesting further action on the application, within 21 business days of the receipt of a complete application.
 - F. Application for tree removal permits may relate to multiple activities regulated under this chapter and may be issued for activity to take place during the twelve-month period following the issuance of the tree removal permit, it being the intent of this chapter that no more than one tree removal permit shall be required per applicant per year, irrespective of the amount and nature of removal sought.
 - G. (Reserved)¹

1. Editor's Note: Former Subsection G, regarding professional review fees, was repealed 5-12-2020 by L.L. No. 6-2020.

- H. A stormwater pollution prevention plan ("SWPPP") consistent with the requirements of Chapter 108A, Stormwater Management and Erosion and Sediment Control, shall be required for any tree removal permit approval that qualifies as or authorizes a land development activity as defined in Chapter 108A. The SWPPP shall meet the performance and design criteria and standards in Chapter 108A. The approved tree removal permit shall be consistent with the provisions of that chapter.

§ 121-6. Tree replacement.

- A. All existing trees are subject to replacement.
- B. Tree replacement shall occur on-site, except where the approving authority determines that, because of site constraints, it is impracticable or impossible to do so, or where the approving authority determines that, because of relevant site planning considerations, it is not warranted. The approving authority may consider payment of a fee to the Tree Bank Fund to satisfy the unmet portion of tree replacement.
- C. The total aggregate diameter of trees removed shall be replaced with new trees according to the following percentages:
- (1) Trees with a DBH of four inches to 17 inches, subject to replacement of 25% of the aggregate diameter of trees removed.
 - (2) Specimen trees (18 inches DBH or greater) and specimen ornamental trees (eight inches DBH or greater), subject to replacement of 50% of the aggregate diameter of trees removed.
- D. Tree replacement plans that consist of more than 10 new trees shall incorporate at least three separate tree genera whereby no single tree genus accounts for more than 33% of all newly planted trees. Exceptions to this requirement may be authorized by the approving authority, when site specific conditions may warrant such a change.
- E. Replanted trees shall be ecologically compatible with the site and neighboring properties. Replanted trees shall be of the same or similar species as those removed when practical. See Appendix A² for a list of recommended tree and shrub species. Invasive trees shall not be allowed under any circumstances. Deviations from the Recommended Tree and Shrub List are acceptable with prior approval from the approving authority. Standards for transplanting of trees and shrubs shall follow the International Society of Arboriculture publication "Tree and Shrub Planting Manual."
- F. At a minimum, 50% of the replacement trees shall be canopy (overstory) trees (mature height greater than 40 feet).
- G. At a minimum, 25% of the replacement trees shall be understory trees (mature height less than 40 feet).
- H. All replacement trees shall be a minimum of 2 1/2 inch caliper. For evergreen trees, a minimum size of eight to 10 feet balled and burlapped is required.
- I. An applicant may substitute a total of eight two-gallon-size shrubs (minimum of three feet in height) to replace one tree.

2. Editor's Note: Said appendix is on file in the Town offices.

- J. The approving authority may reduce the total required tree replacement DBH where the trees proposed for removal include invasive species, such as Norway Maples.

§ 121-7. Determination by approving authority.

- A. In making its determination to grant, deny or grant with conditions a tree removal permit under this chapter, the approving authority shall consider the following factors:
- (1) Whether the proposed removal is consistent with the purpose and findings of this chapter as set forth in § 121-1 of this chapter.
 - (2) The possible or practicable alternatives to the proposed removal.
 - (3) Effect on the critical root zone.
 - (4) Whether the removal(s) will have significant negative effects upon:
 - (a) Erosion potential and drainage patterns in the vicinity.
 - (b) Growth of existing adjacent vegetation.
 - (c) Property values of nearby properties.
 - (d) The health, safety or welfare of the residents of New Castle or its neighboring communities.
 - (e) Solar access of nearby properties.
 - (f) Wildlife habitat as defined in § 121-2.
 - (5) Whether the tree or trees to be removed are of species listed on the New York State list of endangered trees or trees of special concern.
 - (6) Whether the tree or trees are located near existing or proposed improvements.
- B. In cases where the Town's Environmental Coordinator is the approving authority, the applicant will be notified of permit decisions within 21 business days of the application being received by the Town. If the permit is denied, the applicant will be notified in writing by the approving authority of the reason or reasons for such denial.
- C. If the approving authority requires payment of a fee to the Tree Bank Fund to satisfy the unmet portion of the tree replacement requirements, the applicant shall pay a fee in such amount as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended.

§ 121-8. Tree Bank Fund.

- A. Purpose. The Tree Bank Fund shall be a fund to receive in-lieu payments from applicants to satisfy tree replacement requirements as set forth in § 121-6, which cannot be met on-site where the approving authority determines that it is impracticable or impossible to do so, or where the approving authority determines that, because of relevant site planning considerations, it is not warranted as determined by the approving authority. In addition, any public or private entities that wish to donate to the Town of New Castle to provide trees to be planted may donate to the Tree Bank Fund for said purpose.

- B. **Applicability.** The Tree Bank Fund applies to all properties seeking tree removal permit approval in the Town of New Castle pursuant to this chapter.
- C. **Use of funds.**
- (1) Payments and contributions to the Tree Bank Fund shall be used for the sole purpose of planting and maintaining trees, including fertilizing and trimming, and other applicable landscaping projects for public benefit on public property or private property within a public easement with the Town of New Castle. Funds should, if feasible, first be applied to projects within the closest proximity to where the tree removal has occurred.
 - (2) Funds in the Tree Bank Fund shall be administered by the Director of Planning in consultation with the Environmental Coordinator. Projects and fund allocation shall be approved by the Town of New Castle Town Board.
 - (3) Proposed landscaping may include trees, shrubs, and other permanent plant materials. Planting and maintenance includes purchase, transportation, mulching, watering, fencing and labor associated with replacement plantings, and other applicable landscaping. The Tree Bank Fund may be used to fund other associated project tasks including the installation of irrigation systems to support plantings, design, tree inventory, tree boxes, and soil amendments that enhance and promote long-term sustainability of plantings.
 - (4) Public lands include parks, preserves, public open spaces, community and civic facilities, and land within public rights-of-way within the Town of New Castle.
 - (5) The Director of Planning, in consultation with the Environmental Coordinator, shall provide an annual report of the Tree Bank Fund to include an itemized list of receipts and expenses, a list of projects completed, and the current balance remaining in the fund. The Annual Report shall also include a list of proposed projects and an estimated budget for the following year. The Annual Report shall be submitted to the Town Board annually by November 15 for review and approval.
- D. **Required contribution.** The required contribution shall be \$200 per tree, plus a fifteen-percent contingency. Payment into the Tree Bank Fund shall be made prior to the issuance of any tree, building or other applicable permit by the approving authority.

§ 121-9. Issuance of permit with conditions.

Any permit issued pursuant to this chapter may contain such conditions as the approving authority deems necessary to ensure compliance with the legislative intent of this chapter.

§ 121-10. Bond.

- A. The approving authority may require, prior to the commencement of any clearing authorized under any tree removal permit pursuant to this chapter, that the applicant post a bond or other security deemed acceptable to the approving authority in such amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the tree removal permit.

- B. The planting of less than 10 replacement trees may require a monitoring plan for at least five years, but no more than 10 years, the length of said monitoring program shall be determined by the approving authority. The planting of 10 or more trees shall require a monitoring plan for at least five years, and a maintenance bond of 35% of the cost of the plants and labor to install replacement trees for at least five years, the length of said monitoring program and maintenance bond shall be determined by the approving authority.

§ 121-11. Suspension or revocation of permit.

- A. The approving authority may suspend or revoke a tree removal permit in the form of a stop-work order if it finds that the applicant has not complied with any or all of the terms of such tree removal permit, has exceeded the authority granted in the permit; or has failed to undertake the project in the manner set forth in the approved application.
- B. The applicant shall be provided written notice of such stop-work order as soon as reasonably practicable but no later than three days after issuance of the same, which notice shall be delivered personally or by certified mail and addressed to the applicant's address as shown on the tree removal permit. Immediately upon the receipt of a stop-work order, applicant and anyone acting on applicant's behalf shall cease all work being undertaken pursuant to the tree removal permit. Such applicant shall be entitled to a hearing before the approving authority after work has been stopped. If such a hearing is requested by the applicant, in writing, within five days of receipt of notice of the stop-work order, such hearing shall be scheduled by the approving authority within 10 days of receipt of request of a hearing. After the close of the hearing, the approving authority may confirm, modify or cancel the stop-work order.
- C. The approving authority shall set forth in writing its findings and reasons for revoking or suspending any tree removal permit pursuant to this section and keep a copy in the permit application file.

§ 121-12. Term.

The tree removal permit shall be valid for one year from the date of its issuance, including approved tree removals and any required tree replacements, or other permit conditions, unless a different term is otherwise specified by the approving authority. All tree removal permits shall expire upon completion of the work specified therein. The validity of any work duly completed pursuant to an existing tree removal permit shall not be affected by the expiration of the tree removal permit, but such work shall not be continued beyond the expiration date. Tree removal permits may be renewed by the approving authority upon application submitted at least 21 days before the expiration of the original tree removal permit. Standards for issuance of renewals shall be the same for the issuance of tree removal permits.

§ 121-13. Compliance with applicable provisions required.

No tree removal permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the securing of any other required tree removal permit or approval.

§ 121-14. Appeals.

- A. In the case of an application decided by an approving authority other than the Planning Board or Zoning Board of Appeals, the applicant or any other party aggrieved by such determination may seek review by appealing to the Environmental Review Board.
- (1) Any party aggrieved or affected by the determination of the Town's Environmental Coordinator, with respect to a tree removal permit may, within 10 business days of such determination, appeal to the Environmental Review Board. The application must set forth the reasons for such appeal.
 - (2) The Environmental Review Board shall conduct a public hearing on the appeal at its next scheduled meeting and shall, based upon the standards contained herein and the facts of the matter, deny, grant or grant with conditions the permit being sought.
 - (3) The applicant shall mail, by certified mail, return receipt requested, at least 10 days before such hearing, notice of the hearing to all property owners of record within 100 feet of the boundaries of the property on which the proposed regulated activity will be conducted. A list of the names to whom notice of the application was sent and proof of such mailing shall be submitted to the Environmental Review Board prior to the hearing.
 - (4) The tree permit which is the subject of the appeal shall be stayed pending determination of the appeal; provided, however, that the Environmental Coordinator may authorize work as may be necessary in order to mitigate any ongoing environmental impacts or hazardous condition.
- B. A determination by the Environmental Review Board, Planning Board, or Zoning Board of Appeals to grant or deny a tree removal permit may be reviewed, by the applicant or any other aggrieved person by the commencement of an action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules within 30 days of the filing of such a determination with the Town Clerk.

§ 121-15. Inspection.

Any site for which an application has been submitted shall be subject to inspection upon notice to the property owner and applicant at any reasonable time, including weekends and holidays, by the approving authority or its designated representatives. The applicant, by making application for such tree removal permit, shall be deemed to have given its consent to such inspection.

§ 121-16. Action upon completion of work.

- A. Within 30 days after completion of all removals authorized under a tree removal permit issued in accordance with this chapter, the applicant shall notify the Environmental Coordinator of such completion.
- B. Within 30 days of such notification of completion of work, the Environmental Coordinator shall inspect the removal site for compliance with all conditions of the permit.
- (1) When all removal(s) authorized under a tree removal permit are deemed to be completed in an acceptable fashion according to conditions of the tree removal permit, the Environmental Coordinator shall issue a certificate of completion which shall be accompanied by cancellation or return of any bond posted for such purpose.

- (2) When removals authorized under a tree removal permit are deemed not acceptable, the Environmental Coordinator shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the tree removal permit and shall specify a time limit for the correction of all items so listed.

§ 121-17. Penalties for offenses.

- A. Any person who violates any provision of this chapter shall be guilty of an offense, punishable by a fine of \$250 per tree of four inches to 12 inches DBH; \$750 per tree of 12 inches to 18 inches DBH; \$1,500 per tree of 18 inches to 24 inches DBH, and \$2,500 per tree of 24 inches or more DBH. Each violation of the provision of this chapter shall be a separate and distinct offense. In addition, any offender may be ordered by the court to replant trees that were improperly removed, insofar as that is possible. The court shall specify a reasonable time for completion of such restoration, which shall be effected under the supervision of the approving authority. The fines remitted to the Town shall be deposited into the dedicated Tree Bank Fund.
- B. In addition to the penalties outlined in § 121-17A above, the Town shall not issue a building permit, temporary certificate of occupancy or certificate of occupancy for any property for which a violation of this chapter has been served until said violation is dismissed or resolved to the satisfaction of the approving authority or court, as is appropriate.
- C. The Town Engineer, Deputy Town Engineer, Building Inspectors, Code Enforcement Officers and the Town Environmental Coordinator are hereby authorized to issue stop-work orders, appearance tickets and summonses for violation of this chapter.

§ 121-18. Severability.

If any provision of this chapter shall be held for any reason to be invalid, such determination shall not invalidate any other provision hereof, which other provisions shall remain in full force and effect.