

**VILLAGE OF HEAD OF THE HARBOR
BOARD OF TRUSTEES**

**LOCAL LAW NO. 5 OF 2020 REPEALING CHAPTER 149 OF THE VILLAGE OF
HEAD OF THE HARBOR VILLAGE CODE AND CREATING A NEW CHAPTER 149
OF THE CODE OF THE VILLAGE OF HEAD OF THE HARBOR REGARDING
TREES**

Be it hereby enacted by the Board of Trustees of the Incorporated Village of Head of the Harbor as follows:

Section 1. Repealer.

Chapter 149 of the Village Code, entitled "Trees," is hereby repealed in its entirety and is replaced by the provisions set forth below.

Section 2. Enactment.

Chapter 149 of the Village Code, entitled "Trees," is hereby adopted as follows:

§ 149-1. Legislative Intent and Purpose.

- A. The Board of Trustees of the Incorporated Village of Head of the Harbor hereby finds that there is a direct relationship between the preservation of and the planting of trees and vegetation in sufficient number in populated areas of the Village and the health, safety and welfare of Village residents and that trees are related to the natural, scenic and aesthetic values and the physical and visual qualities of the environment which the Village is obligated to protect. Trees reduce noise, provide welcome shade and privacy to Village residents, preserve the balance of oxygen in the air by removing carbon dioxide and fostering air quality and create a bucolic and rural atmosphere in the Village. Vegetation also stabilizes the soil and controls water pollution by preventing soil erosion and flooding and provides a natural habitat for wildlife.

- B. The destructive and indiscriminate removal of trees and other woody vegetation causes increased Village costs for proper drainage control, impairs the benefits of occupancy of existing residential properties, impairs the stability and value of both improved and unimproved real property in the area of the destruction and adversely affects the health, safety and general welfare of the residents of the Incorporated Village of Head of the Harbor.

§ 149-2. Definitions.

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

APPLICANT

The owner, contract vendee or lessee of real property or his duly authorized agent.

IMPROVED REAL PROPERTY

Any real property on which a residential structure, or other place of public assembly has been erected.

MATURE TREE

A woody perennial plant having a single, usually elongate main stem, generally with few or no branches on its lower part, and having a sufficient size depending on the following three categories of trees: canopy, understory or evergreen.

- A. Canopy trees (e.g., *Acer rubrum*, *Fagus grandifolia*, *Tilia*, *Liriodendron*, *Quercus*) having a trunk circumference of 20 inches or greater measured at a point four feet six inches above ground level, except in the case where a tree has been removed without benefit of a permit, in which case the trunk circumference shall be measured at the highest point remaining at or above ground level.
- B. Understory trees (e.g., *Cornus florida*, *Cercis*, *Carpinus*, *Nyssa*) having a trunk circumference of 10 inches or greater measured at a point four feet six inches above ground level, except in the case where a tree has been removed without benefit of a permit, in which case the trunk circumference shall be measured at the highest point remaining at or above ground level.
- C. Evergreen trees (e.g., *Juniperus virginiana*, *Ilex opaca*, *Pinus strobus*) having a height of 10 feet or greater.

PERSON

Any resident of Head of the Harbor or any individual firm, partnership, association, corporation, company, public agency, public utility or organization of any kind or agent thereof.

REAL PROPERTY

Includes all unimproved and improved real property within the Incorporated Village of Head of the Harbor.

SUBSTANTIAL ALTERATION

Any cutting or drastic pruning of a mature tree which impairs, destroys or endangers the life of such tree or its natural symmetry and shall include but shall not be limited to heavy or unnecessary cutting of top branches and cutting of major lower limbs.

SUBSTANTIAL CLEARING

Any cutting or drastic pruning of brush or woody vegetation on a property which alters the runoff pattern of stormwater, or impairs, destroys or endangers the life of such brush or vegetation or its role as a natural habitat.

UNIMPROVED REAL PROPERTY

Any real property on which no residential structure, or other place of public assembly has been erected.

§ 149-3. Prohibited acts; permit required; exceptions.

- A. Permit for substantial alteration or removal of mature trees. It shall be unlawful for any person to remove, destroy or substantially alter or to cause the removal, destruction or substantial alteration of any mature tree located on any real property within the Village of Head of the Harbor without a permit.
- B. Permit for substantial clearing. It shall be unlawful for any person to perform a substantial clearing of brush or woody vegetation on any real property located within the Village of Head of the Harbor without a permit.
- C. The foregoing provisions of this section shall not apply to:
 - (1) Horticultural pruning done pursuant to customarily accepted ornamental or therapeutic practice, which does not substantially alter the habitat of the tree.
 - (2) Any emergency situation in which the removal, destruction or substantial alteration of any tree is necessary to prevent imminent danger to human life or property.
 - (3) The removal of a dead tree.
 - (4) Approved removal of invasive species.
 - (5) The removal or substantial alteration of any tree or substantial clearing of brush or woody vegetation required for the maintenance of any road or utility right-of-way or easement.

§ 149-4. Application procedure; criteria for permit issuance.

- A. Application for a permit shall be made to the Building Inspector.
- B. The application shall be made on such forms as may be prescribed by the Building Inspector and shall include but not be limited to the following:
 - (1) The name and address of the applicant.
 - (2) The purpose of the proposed removal or alteration.
 - (3) The site of the proposed removal or alteration.
- C. A sketch or plan of the area indicating the following may be required by the Building Inspector when deemed necessary to carry out the provisions of this chapter:
 - (1) An outline of existing heavily wooded areas on the site, showing the tree type and range of sizes.
 - (2) The location and size of trees to be removed and the perimeter of areas which are not to be disturbed by tree cutting, clearing or alterations.
 - (3) The location of any improvements on the site.
 - (4) Any additional information that the Building Inspector may reasonably deem necessary for evaluation of the application, except that no new survey of the property or survey location of trees may be required unless there is controversy as to whether a tree is located on the property.
- D. The decision of the Building Inspector shall be based upon the following criteria:
 - (1) The condition of the tree with respect to public safety, disease and danger of falling, proximity to existing or proposed structures and interference with utility services or intended use of the land.
 - (2) The necessity of the removal or alteration of the tree in question.
 - (3) The effect of the removal or alteration thereof on the ecosystem and possible presence of protected habitat.

- (4) The character established at the proposed site of removal or alteration with respect to existing vegetation management practices.
- (5) The impact of any removal or alteration upon existing screening of any contiguous properties or any road or highway bordering the property.
- (6) The applicant's intention to replant trees and revegetate the property.
- (7) The applicant's payment of a monetary fee to mitigate for the lost vegetation in lieu of replacing the tree(s) or replanting the equivalent area of vegetation that is cleared on the property. Such fees shall be deposited into a trust fund to be used by the Village exclusively for the planting of trees and other vegetation on public property within the Village.

E. The Building Inspector may seek a recommendation from one or more members of the Architectural Review Board prior to making a decision on the application.

§ 149-5. Permit fee.

The fee for any permit required under this chapter shall be established, and amended from time to time, by resolution of the Board of Trustees.

§ 149-6. Replacement.

The Building Inspector may require the planting of the same or an agreed-upon alternative species of trees which are as nearly comparable in type and size as practical to the trees to be removed, when the individual character of the trees or the ecological setting requires special consideration as a condition for the issuance of a permit for removal. The quantity, size, species and location of replacement trees shall be based on the recommendation of the Architectural Review Board.

§ 149-7. Penalties for offenses.

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine of not less than \$500 and not more than \$2,000 for each tree unlawfully removed, destroyed or substantially altered without a permit, and a fine of not more than \$1,000 for any other violation under this chapter. Each such violation shall constitute a separate offense and shall be punishable as such hereunder. The planting of replacement trees may be required in addition to the fine herein.

§ 149-8. Enforcement.

The Building Inspector and any member of the Village Police Department are hereby vested with authority to enforce the provisions of this chapter, and any enforcement shall include a rebuttable presumption that the person(s) responsible for any violation under this chapter includes but is not limited to the record owner(s) and/or actual occupant(s) of the premises as well as any person actually engaged in the unauthorized removal of trees.

§ 149-9. Additional rights and remedies unaffected.

Nothing herein contained shall abridge or alter any rights or remedies now or hereinafter existing, nor shall this chapter nor any provisions thereof nor any rule or regulation promulgated thereunder be construed as estopping the Village of Head of the Harbor from exercising its right and fulfilling its obligations to protect the public health and welfare. In addition to all other remedies available to the Village, this chapter shall be enforceable by injunction in an action brought in the Supreme Court.

Section 3. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which judgment should have been rendered.

Section 4. Effective date.

This local law shall take effect immediately upon filing with the New York Secretary of State.