

**VILAGE OF HEAD OF THE HARBOR
BOARD OF TRUSTEES**

**PROPOSED LOCAL LAW NO. [REDACTED] OF 2023 REPEALING CHAPTER 149
OF THE CODE OF THE VILAGE OF HEAD OF THE HARBOR
ENTITLED “TREES” AND CREATING A NEW CHAPTER 149 ENTITLED
“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Chapter 149 of the Village Code, entitled “Trees,” is hereby repealed in its entirety and is replaced by the provisions set forth below.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 enacted as follows:

§ 149-1. Findings and legislative intent.

- A. The Board of Trustees of the Incorporated Village of Head of the Harbor hereby finds that there is a direct relationship between the planting and management of trees and the preservation of natural vegetation in populated areas of the Village and the health, safety and welfare of Village residents, and that trees and natural vegetation 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 and natural vegetation provide privacy to Village residents, reduce noise, provide shade that contributes to energy conservation, 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, especially along the roads. Trees and natural vegetation also stabilize the soil and control water pollution by preventing soil erosion and flooding, yield advantageous climatic effects and provide a natural habitat for wildlife.
- B. The indiscriminate removal of trees and clearing of natural vegetation causes soil erosion and alters the current pattern of stormwater runoff and creates flooding on roadways and other real property in the Village which results in increased Village costs for proper drainage control. Said removal and clearing is detrimental to existing residential properties, impairs the stability and value of real property in the area of said removal or clearing 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.

CLEARING OF NATURAL VEGETATION

The substantial cutting, clearing and/or removal of more than 750 square feet of contiguous natural vegetation occurring on a property.

HABITAT

The natural growing characteristics of any tree or specimen tree, which includes branch spread and distribution, branch height above ground and root spread and distribution.

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.

NATURAL VEGETATION

Plant species found on a property exclusive of any vegetation associated with active agricultural or horticultural activity, home gardens, or formalized landscape or turf areas.

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

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

SUBSTANTIAL ALTERATION

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

§ 149-3. Permits required; exceptions.

- A. It shall be unlawful for any person to perform or cause to be performed the removal or substantial alteration of any mature tree located on any real property within the Village without a permit from the Building Inspector.
- B. It shall be unlawful for any person to perform or cause to be performed the clearing of natural vegetation on any real property located within the Village without a permit from the Building Inspector.
- 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 or substantial alteration of any tree is necessary to prevent imminent danger to human life or property.
 - 3. The removal of a dead or diseased tree, provided the presence of the dead or diseased tree to be removed is first verified by the Building Inspector.
 - 4. The removal of any invasive species identified in the list of invasive species maintained or adopted by the Village, provided the presence of the invasive species to be removed is first verified by the Building Inspector.
 - 5. The removal of any mature tree or clearing of vegetation that is not located within any required setback or buffer area, or within the areas protected by § 149-6 of this Code, and that is located within a front, side or rear yard and within the following distances of the footprint of a principal structure:
 - i. On a parcel containing 20,000 square feet or less: 25 feet.
 - ii. On a parcel containing at least 20,000 square feet, but less than one acre: 35 feet.
 - iii. On a parcel containing at least one acre, but less than two acres: 50 feet.
 - iv. On a parcel containing at least two acres, but less than five acres: 75 feet.
 - v. On a parcel containing at least five acres: 150 feet.
 - 6. The removal or substantial alteration of any mature tree or clearing of natural vegetation required for the maintenance of any road, utility right-of-way or easement.

7. The removal or substantial alteration of any mature tree or clearing of natural vegetation pursuant to a removal plan approved by the Planning Board in connection with an approved site plan.

§ 149-4. 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.

§ 149-5. Protected areas.

Other than for mature trees and natural vegetation that qualify for one or more of the exceptions set forth in Section 149-5(C), the Building Department shall not issue a permit for the removal of a mature tree or clearing of natural vegetation within the following areas:

- A. Within 25 feet of the border, lot line, or boundary of the property with an adjoining property.
- B. Within 25 feet of any roadside frontage of the property, except for construction of a driveway.
- C. Within 100 feet of mean high water of Stony Brook Harbor.
- D. Within 100 feet of the landward edge of any barrier bluff.
- E. Within 100 feet of the boundary of any freshwater or saltwater wetland, marshland, lake, seasonal drainage channel, stream, pond, or other water bow, including, but not limited to, any freshwater or tidal wetland, as identified on and shown on the Freshwater or Tidal Wetlands Maps, as such maps may be from time to time amended, prepared by or for the State of New York, and filed by the Department of Environmental Conservation pursuant to Article 24 and Article 25 of the Environmental Conservation Law of the State of New York.
- F. On any slope exceeding 25% in grade, except as permitted on any steep slope as defined and as allowed in Chapter 85.

Any person aggrieved by this Section may appeal to the Zoning Board of Appeals for relief. The Zoning Board of Appeals shall apply the statutory factors for granting an area variance pursuant to Section 7-712-b of the Village Law, but may grant such relief only upon the added finding that the hardship imposed upon the aggrieved person is the result of unique topographical conditions or the irregular shape of the subject property.

§ 149-6. Application procedure; criteria for permit issuance.

- A. Application for a permit shall be made to the Building Department.
- B. The application forms shall include, but not be limited to the following:

1. The name and address of the applicant.
2. The purpose of the proposed removal, substantial alteration or clearing.
3. The site of the proposed removal, substantial alteration or clearing.
4. Unless waived by the Building Inspector, a sketch or plan of the area indicating the following:
 - i. An outline of existing heavily wooded areas showing the tree type and range of sizes.
 - ii. The location and size of trees to be removed or substantially altered, and the perimeter of areas which are not to be disturbed.
 - iii. The location of any existing or planned improvements on the real property.
 - iv. Any additional information that the Building Department may reasonably deem necessary for evaluation of the application.

C. The decision of the Building Department 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 for the removal, substantial alteration or clearing in question.
3. In cases where removal or substantial alteration is requested due to the poor health or condition of a tree, the information contained within any arborist report submitted in connection with the application.
4. The effect of the removal, substantial alteration or clearing on the ecosystem and possible presence of protected habitat.
5. The effect of the proposed removal, substantial alteration or clearing on the established character of the site.
6. The impact of proposed removal, substantial alteration or clearing upon existing screening of any contiguous properties or any roads bordering the property.
7. The applicant's intention to replant trees and revegetate the property in accordance with Section 149-[9].

D. The Building Inspector's action on a request for a permit pursuant to this Chapter shall be deferred pending site plan approval from the Planning Board when:

1. The tree removal or clearing of natural vegetation is proposed in connection with a project for which site plan approval is required pursuant to this Code;
2. The permit requests permission to remove twelve (12) or more mature trees or any tree with a circumference of 113 inches (36 inch diameter) or greater, measured at a point four feet six inches above ground level;
3. The permit requests permission to clear 2,000 square feet or more of contiguous natural vegetation; or
4. The Building Inspector determines, in their discretion, that the extent of the requested tree removal or clearing and site conditions are such that natural drainage, erosion, or slope stability on or around the subject property will be negatively and substantially impacted.

§ 149-7. Replacement.

As a condition to the issuance of a permit for the removal, substantial alteration or clearing of natural vegetation, the Building Department 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 and vegetation to be removed when warranted by the individual character of the trees or vegetation or the ecological setting.

§ 149-8. 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 mature tree unlawfully removed 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. When pursuing a fine for a violation of this chapter, the Village may take into consideration whether replacement trees or vegetation have been planted.

§ 149-9. 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 property as well as any person actually engaged in the unauthorized removal of trees or clearing of natural vegetation.

§ 149-10. Additional rights and remedies not affected.

Nothing herein 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 rights 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 a court of competent jurisdiction.

§149-11. Establishment of Tree Committee

The Board of Trustees of the Village of Head of the Harbor hereby establishes the "Tree Committee of the Village of Head of the Harbor" to assist the Village in implementing a responsible program for planting, maintenance, husbandry and removal of trees on properties in the Village to maximize the benefits afforded by trees within the Village.

- A. Purpose: The Tree Committee shall serve as an advisory committee to the Village of Head of the Harbor's Board of Trustees and Building Department.
- B. Membership. The Tree Committee shall be comprised of no more than seven members who shall be residents of the Village of Head of the Harbor, and who shall be appointed annually by, and serve at the pleasure of, the Board of Trustees.
- C. Compensation. Members of the Tree Committee shall serve in a voluntary capacity without compensation.
- D. Chairperson and Secretary. The Board of Trustees shall designate a Chairperson of the Tree Committee and the Committee shall select a Secretary from among the members.
- E. Rules and procedures. The Tree Committee shall adopt rules and procedures for its meetings.
- F. Meetings. The Tree Committee will meet at such times as it deems appropriate to accomplish its purposes.

§149-12. Duties and responsibilities of the Tree Committee.

The Tree Committee shall have the following duties and responsibilities:

- A. Develop and/or update annually a written plan, presented to the Board of Trustees, for the care, preservation, pruning, planting, replanting, removal or disposition of trees.
- B. Make recommendations to the Board of Trustees regarding:
 - 1. the preservation and replenishing of trees and woods so as to minimize undesirable environmental impacts and further beautify the Village in furtherance of the health, safety and welfare of present and future Village residents;
 - 2. proposed tree planting projects to be performed by the Village throughout its various rights-of-way and Village-owned properties;

3. action to be undertaken by the Village to maintain its Tree City USA certification.
- C. Provide education and public awareness about tree preservation, tree risk assessment, appropriate tree choices for given site conditions and other aspects of tree stewardship.
 - D. Assist the Board of Trustees in applying for grants related to tree inventory management, community educational outreach, and other related activities.
 - E. Coordinate Arbor Day activities and other public forestry programs benefiting the community.
 - F. Upon request by the Board of Trustees, provide advice and recommendations on tree-related matters.
 - G. Develop, maintain and file with the Village a list of species of trees suitable for planting in the Village of Head of the Harbor.
 - H. Upon request by the Building Inspector, provide advice and recommendations with regard to applications for permits to remove or substantially alter any mature tree or clear brush or woody vegetation from real property, and the quantity, size, species and location of any replacement trees and vegetation that may be required as mitigation.

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.