

LOCAL LAW INTRODUCTORY No. 3 OF 2010

A LOCAL LAW RESTRICTING TREE CUTTING, TOPPING AND REMOVAL

BE IT ENACTED by the Village Board of the Village of Tuxedo Park, Orange County, New York as follows:

SECTION 1: ENACTMENT OF NEW CHAPTER 47.

Section 47-1. Purpose

The Board of Trustees of the Village of Tuxedo Park has determined that it is in the best interests of the citizens of the Village to promote and protect their health, safety and welfare to revise the Village's Code regulations concerning tree cutting, topping and removal. In order to provide a balance between the preservation of trees in the Village (and the associated rural character, public viewsheds, and environment of the Village), and a property owner's right to maintain their property in a manner they deem most fitting, the Board of Trustees finds it necessary to amend the existing Village Code.

Section 47-2. Applicability

This Chapter applies to all properties within the Village of Tuxedo Park not included in the Gateway Overlay District or the Ridgeline and Precipice Overlay District, and notwithstanding any other section of the Code to the contrary, except that this Chapter does not apply to any applications for site plan or subdivision review.¹

Should an owner of property desire to cut, top or remove a greater number of trees on his/her property than permitted herein, he/she may submit a sketch of tree locations relative to the property lines of the involved tax parcels for approval illustrating the extent of the cutting, topping or removal to the Board of Trustees, or the Board of Architectural Review or Planning Board if the Board of Trustees refers the matter to such boards.

Section 47-32. Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give the meaning they have in common usage and to give this Chapter its most reasonable application.

- A. SMALL TREE: Any tree 5 inches or less in diameter, measured 48 inches above the ground.

¹ See also Chapter 40: Clearing, Grading, Filling and Excavating.

- B. LARGE TREE: Any tree greater than 5 inches in diameter, but not more than 160 inches in diameter, measured 48 inches above the ground.
- C. SIGNIFICANT TREE: Any tree greater than 160 inches in diameter, measured 48 inches above the ground.
- D. TOPPING: The cutting of a tree's trunk or main stem, more than 3 feet below the tree's top per calendar year.

Section 47-43. Small Trees

A property owner, or his/her designated representative, has the right to cut, remove or perform topping of any small tree.

Section 47-54. Large and Significant Tree Cutting, Removing or Topping – Notice and Inspection

A. A property owner, or their designated representative, proposing to cut, remove or perform topping of any large tree or significant tree on their property must notify the Building Inspector in writing of his/her proposal, including the date on which the cutting, topping or removal will occur, the number and size of the large and significant trees proposed to be cut, removed, or upon which topping will be performed, and the number of contiguous acres in the tax parcel to which such proposal applies. comprising such proposal. ~~No cutting, topping or removal of any large or significant trees may be accomplished without the written approval of the owner of the property.~~ Prior to undertaking any cutting, topping or removal of such large or significant trees in accordance with the regulations in this Chapter, the Building Inspector ~~must~~ may inspect the property to ensure compliance with this Chapter.

1.B. No cutting, topping or removal of any large or significant trees may be accomplished by an individual or entity other than the owner of the property without the written approval of the owner of the property. Such written approval must be submitted to the Building Inspector as part of the notice requirement.

Section 47-65. Large and Significant Tree Cutting, Removing or Topping – Restrictions

A. Large Trees. A property owner, or their designated representative, may each calendar year cut, remove or perform topping on their property of 1 live large tree per each contiguous acre of property within a single tax parcel. A property owner owning less than 1 acre within a single tax parcel may cut, remove or perform topping on their property (or their designated representative may do so) of 1 live large tree each year. There is no limit to the number of dead large trees that may be cut or removed. For properties containing greater than one contiguous acre, fractional units of acreage 0.5 or less shall be rounded down and fractional units of acreage greater than 0.5 shall be rounded up.

B. Significant Trees. No cutting, topping or removal of significant trees may be accomplished unless and until approved by the Board of Trustees, or the Board of Architectural Review or Planning Board if the Board of Trustees refers the matter to such boards. Any such application for an approval of cutting, topping or removal of significant trees must submit a sketch of tree locations relative to the property lines of the involved tax parcels site plan indicating the location, size and species of the subject trees. Prior to any approval a site visit must be performed by the Building Inspector or a majority of the board deciding the application, and the advice of an arborist, at the cost of the applicant, may be solicited by such board on ~~any~~-related issues including the need for whether a compensatory, mitigating or supplementary planting plan is required. Any decision by the Board of Trustees, Board of Architectural Review or Planning Board in this regard may be appealed to the Board of Zoning Appeals. There is no limit to the number of dead significant trees that may be cut or removed.

C. Guiding Policy. The decision making referenced above shall take into account the following criteria and goals:

1. Preventing excessive or uncontrolled stormwater runoff and soil erosion that will adversely impact adjacent or down gradient properties, especially any of the Village's three lakes.
2. Protecting Village lakes from excessive turbidity and chemical pollutants.
3. Preserving mature trees that augment the beauty of our Village.
4. Retaining existing public viewsheds and landscapes consistent with the listing of the Village on the National Register of Historic Places.

Section 47-~~7~~6. Emergencies

Emergency conditions are those in which the cutting, topping or removal of a large or significant tree poses a hazard to life or property. Emergency conditions in which the cutting, topping or removal of a large or significant tree poses a hazard to life or property, and the above inspections and/or approvals would not timely provide a safe abatement of such hazard, the Village Police must be notified and a report made, including photographs. If time allows, such report conditions must be inspected or reviewed by the Building Inspector, with advice from an arborist when appropriate (at the cost of the property owner), to determine the appropriate course of action, including compensatory, mitigating or supplemental planting. If time does not allow because the hazard is so imminent that such inspection or review reporting cannot be accomplished in a timely fashion under the circumstances, then the Village Police must be notified and a report made, including photographs may direct the property owner or their designated representative as to the proper course of action. After the Village Police have completed their report, the homeowner can take the appropriate course of action in his/her discretion.

Section 47-8. Removal of Felled or Topped Trees

All trees cut or topped in accordance with this Chapter shall be removed from the premises within five days. Trees cut or topped in violation of the Chapter must not be removed until and in compliance with the direction of the Building Inspector.

Section 47-97. Penalties and Mitigation

A. Failure to notify the Village Building Inspector of any tree cutting, topping or removal for large trees shall result in a fines (i) to the property owner of a minimum of \$200 dollars, and a maximum of \$500 dollars, per tree, and (ii) to the person or entity performing such work of a minimum of \$100 dollars, and a maximum of \$200 dollars, per tree, for each allowable tree cut as determined by property acreage.

A.B. For each large tree cut, in excess of those allowed, the ~~maximum~~ fine to the property owner will be a minimum of \$81,000 dollars per tree (with a minimum of \$750 per tree), and to the person doing the work a maximum-minimum fine of \$4500 dollars per tree (with a minimum of \$200 dollars per tree. Large ~~Trees cut in excess of those permitted pursuant to this Chapter without notification or authorization shall also~~ may be required to be replaced with trees to be determined by the Village Building Inspector in consultation with the Village Arborist (at the cost of the property owner) who will determine an appropriate compensatory, mitigation or supplemental planting plan. A tree replacement plan using invasive species is strongly discouraged.

B.C. Significant trees cut without authorization shall result in a ~~maximum-minimum~~ fine to the property owner of \$2,050 per tree cut (with a minimum of \$2000 dollar fine per tree), or such other maximum amount permitted under law, and shall result in a maximum-minimum fine to the person performing the work of \$1,00750 dollars fine per tree (with a minimum of \$500 dollar fine per tree). Significant trees cut without notification or authorization ~~shall also~~ may be required to be replaced with trees to be determined by the Village Building Inspector in consultation with the Village Arborist (at the cost of the property owner) who will determine an appropriate compensatory, mitigation or supplemental planting plan. A tree replacement plan using invasive species is strongly discouraged.

C.D. Anyone who creates conditions under which a tree would not survive which include, but are not limited to, girdling, burying roots and trunk under piled earth, and poisoning, will be subject to the same fines if such tree were cut, removed or topped without authorization as described above. ~~Contractors who violate this legislation are subject to the suspension or revocation of their right to perform work in the Village by action of the Board of Trustees, after a full and fair opportunity to be heard.~~

D.E. Anyone who performs any cutting, topping or removal of any large or significant trees without authority as provided in this Chapter, and on property not their own and without the permission of the property owner or their designated representative, shall be in violation of this Chapter for which they shall be fined (including an amount

necessary to compensate the Village Arborist) to the same extent as a property owner violation as set forth in this Chapter.

SECTION 2: SUPERSEDING PROVISION

To the extent that any State or local laws fail to provide specific authority for this Local Law, or otherwise appear to be in conflict with this Local Law, including but not limited to Penal Law §§ 10.00, 55.00, 55.05, 55.10, 70.15 and 80.05, then such laws are hereby superseded by this Local Law pursuant to New York Municipal Home Rule Law and the common law.

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 be confined in its operation to the clause, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and the remaining provisions shall remain in full force and effect.

SECTION 4: EFFECTIVE DATE

This law shall take effect upon the filing of this Local Law with the New York Secretary of State in the manner provided for in the Municipal Home Rule Law.