



TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY

PROPOSED LOCAL LAW AMENDING CHAPTER 2 OF THE TOWN CODE
ENTITLED "ADMINISTRATION AND ENFORCEMENT"

LOCAL LAW MEMORANDUM

Purpose of Law:

The purpose of the local law is to amend Chapter 2 of the Town Code entitled "Administration and Enforcement" with respect to the tree removal permit process to support the preservation of trees within the Town.

Budget Implications:

The adoption of the proposed local law will not have any significant direct budgetary implications.

Explanation:

Matter in **bold** and underscoring is new; matter in brackets with strikethrough [—] is old law to be omitted.

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2021**

**A LOCAL LAW AMENDING CHAPTER 2 OF THE TOWN CODE
ENTITLED "ADMINISTRATION AND ENFORCEMENT"**

BE IT ENACTED by the Town Board of the Town of North Hempstead, as follows:

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to amend Chapter 2 of the Town Code entitled "Administration and Enforcement" to make amendments to the tree removal permit requirements in Town Code Section 2-9(T) relative to the preservation of trees on private property.

Section 2.

Chapter 2 of the Town Code is hereby amended as follows:

§ 2-9 Permit required; application.

T. Tree removal permits.

- (1) No person, firm or corporation shall remove, destroy or substantially alter the habitat of any tree to cause the death of any tree or trees on private property without first obtaining a tree removal permit.
[Amended 6-19-2012 by L.L. No. 10-2012]
 - (a) If the removal of a tree(s) on private property is in connection with another activity for which a permit is required under § 2-9A of this Code, a tree removal application as described in this subsection is required. In this section a "tree" is defined as any living woody plant which is six inches or more in diameter at a height of 4 ½ feet above the base of the trunk, including its root system and the environment within the area defined by the outermost limits of its branches. In this section, the removal of a non-living tree shall require a permit hereunder.
 - (b) If the removal of a tree(s) on private property is not in connection with any other activity for which a permit is required under § 2-9A of this Code and is located in the front yard of a parcel, [an applicant] the tree removal is subject to the [definitions and tree removal] application and replacement requirements [as described] set forth in Chapter 20A.

(c) Where terms are not defined in this section, then the words shall have the meaning as set forth in §20A-3.

(2) If any such tree removal occurs within the six months prior to the filing of an application for a permit required by § 2-9A, the removal of a tree or trees is deemed to have taken place in connection with the permit required by § 2-9A. This subsection shall not apply to any tree removal that occurred within the six-month period prior to the effective date of this subsection.

(3) In addition to the information required by §2-9B of this Code, an application for a tree removal permit shall also include the following information:

- (a) The name and address of the applicant and status of legal entity.
- (b) The status of the applicant with respect to the land.
- (c) Written consent of the owner or owners of the land, if the applicant is not the owner or sole owner.
- (d) The location of the property, including the section, lot and block number and street address.
- (e) The reason tree removal is sought.
- (f) The condition of each tree with respect to disease and danger of falling.
- (g) A description of the size and type of each tree to be removed, including common name and/or botanical name.

(h) Photos of each tree to be removed.

(i) A diagram showing the proposed location of the required replanting. A copy of the Tree Standards and Specifications will be made available to the applicant.

~~[(h)]~~**(i)** Such other information as may be reasonably be required by the Building Commissioner to establish compliance with this section, including, but not limited to the following:

[1] A signed statement from a New York State certified arborist indicating the health of the tree.

[2] An erosion control plan.

- [3] [~~Photos of each tree to be removed.~~] **Reserved**
 - [4] A survey noting the location of any structures or utilities endangered by the tree.
 - [5] Alternative mitigation if the tree acts as a visual and/or noise barrier to a road or highway.
 - [6] Proposed methods to ensure the protection of remaining trees. [~~A copy of the Tree Standards and Specifications will be provided to the applicant.~~]
 - [7] Flagging of each tree to be removed.
- (4) In making the determination to grant or deny the application, the [b]**B**uilding [e]**C**ommissioner shall be guided by the following criteria:
- (a) The ability of the applicant to rearrange the layout of proposed structures to minimize the removal of trees.
 - (b) The necessity of removal or alteration of the tree in question.
 - (c) The condition of the tree with respect to disease and danger of falling. In the event that the diseased condition of the tree is not evident, the Building Commissioner maintains the right to require the applicant to submit proof from a New York State certified arborist.
 - (d) The proximity of the tree to proposed or existing structures.
 - (e) Whether the tree endangers the usefulness of a public sewer or public utility.
 - (f) The significance of the tree in regard to:
 - [1] The size of the tree.
 - [2] The rarity of the species.
 - [3] The historical value of the tree.
 - [4] Whether the tree is included on the inventory of landmark trees and other significant trees in the Town.**
 - (g) The effect of removal on:

- [1] The character of the site with respect to vegetation management practices.
 - [2] Ecological systems
 - [3] The existing screening of any road or highway bordering the property in question.
 - [4] Erosion control from the parcel on which the tree is to be removed and its impact on adjacent parcels.
- (h) Whether a denial of the permit will result in unnecessary hardship or severe financial loss to the applicant.
- (5) Tree replacement guidelines. Each tree removed of a diameter of six inches or greater **shall be** subject to the tree replacement guidelines enumerated in this subsection. **Failure to comply with the tree replanting requirements set forth in this section shall constitute a separate and distinct offense hereunder.**
- (a) ~~[Fifty percent of the total tree diameter removed must be replaced.]~~
Replacement tree(s) of a deciduous variety must be a minimum diameter of 2 1/2 inches, measured at 4 1/2 feet in height above grade or above the root ball. Replacement trees of a coniferous variety must be eight feet in height above grade or above the root ball. Except as provided for in § 2-9(T)(5)(d):
- [1] Each tree removed having a diameter measuring between six inches to thirty inches shall require a replacement tree to be planted.**
- [2] Each tree removed having a diameter greater than thirty inches will require the planting of two replacement trees.**
- (b) The tree(s) to be planted in replacement shall be located on the same parcel from which the tree(s) is proposed to be removed. **To the extent practicable, a tree removed in the front yard shall be replaced with a tree planted in the front yard.**
- (c) ~~[The proposed location of the new tree(s) shall be approved by the Building Commissioner.]~~
- [~~(d)~~] The tree(s) to be planted in replacement shall be from a similar size class or from a larger size class as the tree(s) removed, **unless a smaller size class is determined to be more appropriate, as determined by the Building Commissioner.** Size classes are enumerated in the Tree Standards and

Specifications to be promulgated by the Town Board, subject to the advice of the [Building Commissioner] Tree Advisory Committee established pursuant to Chapter 20A.

([e]d) If the Building Commissioner determines that the site does not allow for the planting of the required number of trees, the Building Commissioner shall require the applicant to plant the maximum number of trees possible, with any remaining requirement satisfied by the [trees to be replaced with shrubbery, provided the plant selection has met his prior approval, as a condition of a tree removal permit. If the site does not permit the planting of shrubs, the Building Commissioner shall require the applicant to] payment of an additional fee to the [Commissioner of] Building[s] Department for each tree unable to be planted in [an] the amount [determined by the applicant and confirmed by the Commissioner to be equal to the estimated cost of the required number of trees and/or shrubs] set forth in § 20A-13. The fee shall be allocated to the Town's Tree Preservation Fund.

([f]e) All required tree plantings shall occur between April 1 and December 1 and 90 days after the tree removal.

(f)[1] If plantings cannot occur within 90 days of the removal due to the above planting time restrictions, the Commissioner of Buildings [may] shall require the applicant to deposit a performance bond or a cash deposit in the form of a certified check with the Commissioner of Buildings in an amount which shall be determined by [the applicant and confirmed by] the Commissioner to be equal to the estimated cost of planting the required number of trees [and/or shrubs] and, if applicable, stabilizing the site. The term of said deposit or performance bond shall not exceed a period of six months, and the deposit or bond shall not be released until the plantings have been satisfactorily completed in accordance with the approved tree removal permit.

[(a)] [1] In the event of a default, such bond or cash deposit shall be forfeited to the [Town Parks Department for additional plantings in Town parks,] Building Department and the funds shall be applied to the Tree Preservation Fund. [and the applicant shall] If a permittee is [be] found to be in violation of the conditions of the tree removal permit[-], [T]he Commissioner of Buildings shall determine the remedy of the violation; however, in no circumstances shall such forfeiture of the bond serve as a remedy of the violation.

~~[(b)]~~ [2] Upon satisfactory completion of the contemplated work in accordance with the application and this chapter, such bond or cash deposit shall be released by the Commissioner of Buildings. Satisfactory completion of the work shall be evidenced by the Commissioner of Buildings.

(6) A two year tree establishment bond will be required where trees have been removed on a parcel in conjunction with or to facilitate the construction of a new commercial building or residential dwelling in which tree replanting is required.

(a) The applicant shall deposit a two year tree establishment bond or a cash deposit in the form of a certified check with the Commissioner of Buildings after the Commissioner of Buildings approves the trees at the final inspection and prior to issuance of the certificate of occupancy. The bond or escrow amount shall be 100 percent of the total landscaping costs, but in no case shall be less than \$1,000 per required replacement tree. If a bond is offered, it shall be executed by a surety or guaranty company qualified to transact business in the State of New York and acceptable to the Town.

(b) Two years after the date of the bond or escrow account being provided, the Commissioner of Buildings shall inspect the site and make a determination of whether the required trees are viable, and if so, the Town may release the bond or escrow account upon approval by the Commissioner of Buildings. In the event of a default, such bond or cash deposit shall be forfeited to the Building Department and the funds shall be applied to the Tree Preservation Fund.

~~[(6)]~~ 7 In the event the Building Commissioner denies a request for a tree removal permit, the applicant may appeal his decision to the Board of Zoning and Appeals pursuant to § 70-225M.

~~[(7)]~~ 8 No permit shall be issued for tree removal unless:

- (a) The application is accompanied by plans for the development of the land from which such tree is to be removed and of any other land on the same tax lot or lots; or
- (b) The application demonstrates a serious threat to public health and safety, which **cannot be effectively eliminated by trimming the tree and** can be solved by removal of such tree. **If the stated serious threat to public health and safety concerns the health of the tree, the Building**

Commissioner may request a signed statement from a New York State certified arborist indicating the health of the tree.

(9) Display of permit. Any permit issued under Section 2-9(T) of this chapter shall be conspicuously displayed on the frontage of the premises for which it was issued so as to be easily visible from the nearest public street. The permit shall be posted at all times during the performance of the work and shall not be removed until such time as the authorized tree work has ended and the Building Department has issued a certificate of tree planting to close out the permit. A property owner or permit holder who fails to post a permit shall be deemed in violation of this chapter.

(10) Prior to land preparation or construction activity that could damage any tree on a property a protective barrier shall be placed around the tree. Such protective barrier shall remain in place until all construction activity is terminated. If the construction or development of a property results in damage to a tree on the property requiring its removal, such tree shall be subject to the provisions of this section. Minor tree damage shall be repaired in accordance with accepted tree surgery practice.

(11) The Building Commissioner shall issue a certificate of tree planting if it is found that the proposed tree removal and tree replacement has been completed substantially in accordance with the permit and the laws applicable thereto. A photo of each replacement tree that is planted shall be maintained in the certificate of tree planting file.

(12) No certificate of occupancy shall be issued by the Building Commissioner until all tree planting and associated restoration work shall be completed to the satisfaction of the Building Commissioner except that, where a certificate of occupancy is applied for between December 1 and April 1, the permit holder shall submit an agreement, in writing, on a form approved by the Town Attorney, to the Town signed by the permit holder to ensure compliance with all planting and restoration work to the satisfaction of the Building Commissioner on or before the first day of May next following the making of the agreement.

Section 3.

Chapter 2 of the Town Code is hereby amended as follows:

§ 2-75 Penalties for offenses.

[Amended 8-18-1987 by L.L. No. 12-1987]

- A. Except as otherwise expressly provided, any person or persons, associations or corporation who shall violate any of the provisions of this chapter or fail to comply therewith or with any of the requirements thereof or who shall erect, construct, alter or repair or who has erected, constructed, altered or repaired a building or structure in violation of any statement or plan submitted and approved thereunder or of a permit or certificate issued thereunder shall be guilty of a violation punishable **as follows:** by a fine of not less than \$500 nor more than \$5,000 or imprisonment for not more than 15 days, or both such fine and imprisonment, **for a conviction of a first offense; by a fine of not less than \$5,000 nor more than \$10,000 or imprisonment for not more than 15 days, or both such fine and imprisonment, for a conviction of a second or subsequent offense.** The owner and/or tenant of a building, structure or premises or part thereof where anything in violation of this chapter shall be placed or shall exist and any architect, engineer, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and, upon conviction thereof, shall be dealt with as herein provided. The following minimum penalties **set forth below**, with the maximum penalty as set forth above, shall apply to **each** ~~[removal of a]~~ tree ~~[or trees]~~ **unlawfully removed** without having first obtained a tree removal permit and/or to the failure to replace trees as required. **To the extent feasible, for enforcement purposes, the diameter of each tree unlawfully removed shall be measured at a height of 4 ½ feet above the base of the trunk, otherwise the measurement shall be taken at the stump. Where the diameter of a removed tree cannot be ascertained, the fine for each tree unlawfully removed shall be the same as the fine for a tree measuring 25 or greater inches in diameter.**

[Amended 8-21-1990 by L.L. No. 8-1990; 4-2-2002 by L.L. No. 4-2002; 10-18-2005 by L.L. No. 10-2005]

Tree Diameter	Minimum Fine <u>(first offense)</u>	<u>Minimum Fine</u> <u>(second or</u> <u>subsequent offense)</u>
(inches)	(per tree)	<u>(per tree)</u>
6 to 10	\$500	<u>\$5,500</u>
11 to 15	\$1,000	<u>\$6,000</u>

16 to 18	\$1,500	<u>\$6,500</u>
19 to 24	\$2,500	<u>\$7,500</u>
25 or greater	\$5,000	<u>\$10,000</u>

- B. The imposition of the penalties herein prescribed shall not preclude the Town Counsel from instituting any appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to restrain, correct or abate a violation or to prevent an illegal act, conduct, business or use in or about any premises.
- C. No oversight or dereliction of duty on the part of the [~~Chief of~~] Building Commissioner shall legalize the erecting, construction, alteration, removal, use or occupancy of a building or structure that does not conform to the provisions of the Building Code. [Amended 4-2-2002 by L.L. No. 4-2002]

Section 4.

This Local Law shall take effect immediately upon filing with the Secretary of State.