

VILLAGE OF BROOKVILLE
LOCAL LAW 4-2019
“TREES”

A local law to repeal existing Chapter 197, “*Trees*” of the Code of the Village of Brookville and adopt new Chapter 197, “*Trees*” to regulate the cutting and removal of trees in the Village, establish the permitting procedures, and create the position of Tree Warden. The Code was adopted by Local Law 2-1989 by the Board of Trustees on October 17, 1989 and was last amended by the Board of Trustees by Local Law 3-2017 on November 19, 2019.

BE IT ENACTED by the Board of Trustees of the Village of Brookville as follows:

SECTION 1. Chapter 197, “*Trees*” of the Code of the Incorporated Village of Brookville is hereby repealed and new Chapter 197, “*Trees*” is hereby adopted to read as follows:

CHAPTER 197

TREES

ARTICLE I

Trimming or Removal Along Streets

§ 197-1. Duty of owners and occupants.

It shall be the duty of each owner and occupant of the land situated along any street appearing on the Official Map of the Village to trim or remove the trees which are located in front of such land and in, on, along or near such street when such trees are an obstruction upon such street or otherwise pose a threat to life or property.

§ 197-2. Designation of Board of Trustees.

The Board of Trustees may, by resolution, designate the trees to be removed or trimmed and, if trimmed, the manner and extent of such trimming.

§ 197-3. Notice.

A certified copy of said resolution shall be served on the owner or occupant of such land either personally or by mail, together with a notice that if the trees are not so removed or trimmed within a period therein specified, not less than 10 days from the service of said notice, the Board will meet at a time and place specified in said notice to authorize an expenditure for such removal or trimming and to make an assessment therefor upon such land.

§ 197-4. Hearing.

The Board of Trustees shall meet at the time and place specified and shall then and there hear and determine all objections that be made to such assessment, including the amount thereof, and shall assess upon the land the amount which it may deem just and reasonable, not exceeding, in case of default, the amount stated in the notice.

§ 197-5. Recovery of amount assessed.

If the amount so assessed is not paid within 15 days after such assessment, an action to recover the amount may be maintained by the Village against the owner or occupant liable therefor, or a special warrant may be issued by the Board of Trustees for the collection of such assessment, or the amount thereof may be included in the next annual tax levy.

§ 197-6. Appeals.

A proceeding to review the assessment in the manner provided by Article 78 of the Civil Practice Law and Rules may be commenced within such 15 days.

ARTICLE II
Alteration or Removal of Trees

§197-7 Findings and Purposes.

A. The Board of Trustees of the Incorporated Village of Brookville hereby finds that there is a direct relationship between preservation of and the planting of trees, shrubs and associated vegetation in sufficient number in populated areas of the village and the health, safety and welfare of village residents and that trees, shrubs and associated 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, as well as directly related to property values in the Village. Trees and such vegetation reduce noise, provide welcome shade 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, especially along the roads. Trees 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 destructive and indiscriminate removal of trees and related vegetation disrupts the ecological balance in nature and causes increased village costs for proper drainage control, impairs the benefits of occupancy of existing residential properties and impairs the benefits of occupancy of existing residential properties and 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 Brookville.

§197-8 Definitions.

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

APPLICANT shall mean the owner, contract vendee or lessees of real property or its duly authorized agent seeking a permit to substantially alter, destroy or remove trees pursuant to the provisions of the chapter.

BUILDING INSPECTOR shall mean the duly appointed Building Inspector of the Incorporated Village of Brookville.

HABITAT shall mean the natural growing characteristics of any tree, which includes branch spread and distribution, branch height above ground and root spread and distribution.

PERSON includes any resident of Brookville or any individual, firm, partnership, association, corporation, or company, or agent thereof.

REAL PROPERTY includes all unimproved and improved real property within the Incorporated Village of Brookville.

SUBSTANTIAL ALTERATION includes any cutting or drastic pruning of the habitat of a 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 (topping) and cutting of major lower limbs (elevating).

TREE shall include any woody plant, its root system and the environment within the area defined by the outermost limits of its branches, and shall include shrubs, bushes and similar natural growth.

TREE DESTRUCTION OR REMOVAL shall mean the cutting down of a tree or any other act or practice which may reasonably be expected to either, immediately or within the course of time, cause the tree to die after the commission of said act or practice, including but not limited to damage inflicted upon the tree, its root system or trunk as the result of:

- A. Improper use of machinery on or around the tree.
- B. Storage of materials in or around the tree.
- C. Soil compaction.
- D. Altering the natural grade or trenching near the roots to expose the roots or cover the trunk, permitting the infection or infestation of the tree by pests, fungus or harmful bacteria.
- E. Excessive harmful pruning.
- F. Paving with concrete, asphalt or other impervious surfaces within such proximity as to be harmful to the tree.
- G. Application of herbicides or defoliants or poisons.
- H. Girdling.

TREE WARDEN shall mean the duly appointed Tree Warden of the Incorporated Village of Brookville.

§197-9 Creation and establishment of Tree Warden.

There is hereby created and established the position of Tree Warden for the Incorporated Village of Brookville, New York, who shall be appointed by the Mayor with the approval of the Board of Trustees for a term of one year. The Tree Warden shall be an arborist certified by either the New York Arborists Association or the International Society of Arboriculture.

§197-10 Jurisdiction, Duties and Responsibilities of the Tree Warden.

The Tree Warden shall have:

A. Original jurisdiction over the granting or denying of tree removal permits for any and all trees on any real property in the Village of Brookville except as otherwise provided in this Chapter.

B. Responsibility for reviewing applications and making recommendations to the Planning Board, the Building Inspector and the Board of Appeals in connection with the approval of subdivisions and site plans by the Planning Board, the issuance of buildings permits by the Building Inspector and the granting of variances and conditional use permits by the Board of Appeals as hereinafter set forth in § 197-13 et seq.

C. Authority to issue appearance tickets returnable in Brookville Village Court for any violations of this Chapter pursuant to Section 9.15(B) of the Code of the Village of Brookville.

§197-11 Prohibited Acts.

A. No person shall remove, destroy or substantially alter the habitat of any tree which is eighteen (18") inches in circumference (or 5.7" in diameter) or greater at any point between the ground level and a height of four (4) feet above the base of the trunk on any real property within the Village of Brookville without first obtaining approval from the Tree Warden and a tree removal permit from the Building Inspector, as hereinafter prescribed.

B. No tree removal permit shall be required for the removal, destruction or substantial alteration of tree(s) in connection with any building permit issued by the Building Inspector, any site plan or subdivision approval granted by the Planning Board or any variance or conditional use permit granted by the Board of Appeals.

C. No person shall remove, destroy or substantially alter the habitat of any tree, regardless of size, within twenty (20) feet of a side or rear yard-or within thirty (30) feet of a front yard without approval of the Tree Warden and a tree removal permit from the Building Inspector, as hereinafter prescribed.

D. No person shall remove, destroy or substantially alter the habitat of more than 20 trees, regardless of size, within a one year period, without approval from the Tree Warden, and a tree removal permit the Building Inspector, as hereinafter prescribed.

E. This Chapter shall not apply to an emergency situation in which removal, destruction or substantial alteration of any tree is necessary to prevent imminent danger to human life or property; the pruning of trees made in accordance with customarily accepted ornamental procedures; or the normal tree trimming and cutting by a utility company to maintain utility lines or cables.. Utility companies trimming trees to maintain lines and cables, and to the extent

possible, property owners with an emergency situations shall provide five (5) days' notice to the Building Inspector prior to the commencement of any tree cutting .

§197-12 Permits for Tree Removal.

A. Before removing, destroying or substantially altering the habitat of one (1) or more trees, such person shall submit an application for a tree removal permit to the Tree Warden by delivering the same to the Building Inspector. The application shall be made on such form as may be prescribed by the Tree Warden and shall include, but not be limited to, the following:

1. The name and address of the applicant and the owner of the real property.
2. Written consent of the owner or owners of the real property, if the applicant is not the owner.
3. Location of the property, including a street number and address and tax map designation.
4. Purpose of proposed tree removal or alteration.
5. Site of the proposed tree removal or alteration.

B. A sketch or plan of the property indicating some or all of the following may be required by the Tree Warden 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 of any existing and proposed improvements and structures on the real property.
3. Any proposed grade changes that might adversely affect or endanger any trees on the site and specifications of how to maintain them.
4. Designation of all diseased, dead or damaged trees.
5. Location of all trees and identification of size and species and identification of the trees to be removed and the trees to be maintained.
6. The size, species and planting method of all proposed replacement trees.
7. Any additional information that the Building Inspector may reasonably deem necessary for evaluation of the application.

C. The decision of the Tree Warden shall be based on the following criteria:

1. The condition of the tree or trees with respect to disease, insect attack and hazardousness, danger of falling, proximity to existing and proposed structures and interference with utility service.

2. The necessity of the removal, destruction or alteration of the tree in question in order to implement the stated purpose of the application.
3. The effect of the removal, destruction or alteration on ecological systems.
4. The environmental effect of the removal, destruction or alteration.
5. The aesthetic effect of the removal, destruction or alteration.
6. The effect of the removal or alteration on removal, soil moisture retention, flow of surface water and drainage.
7. The character established at the proposed site of removal, destruction or alteration with respect to existing vegetation management practices.
8. Whether the tree in question is a specimen tree or is otherwise worthy of preservation due to unusual characteristics such as age, history, size, rarity or visual importance to the neighborhood.
9. The impact of any removal or alteration upon existing screening, property values or any road or highway bordering the property.
10. Any of the considerations enumerated in §197-1 of this Chapter.

D. A non-refundable permit application fee in the amount prescribed by Chapter A224, Fee Schedule, of the Village Code shall be paid with each application.

§197-13 Land Development Procedures.

A. Planning Board review:

1. If any trees are to be removed, cut, destroyed or substantially altered as a consequence of any proposed subdivision of real property or site plan review then, simultaneously with the submission of an application to the Planning Board for approval of any such site plan or subdivision map, the applicant shall submit to the Tree Warden three (3) sets of such site plan or subdivision map together with a tree survey prepared by a licensed land surveyor showing the location of all trees on the plan or map, the size of such trees and the type or species thereof, and showing the effect of any proposed construction and/or grading on said tree survey as will enable the Tree Warden to physically inspect the site and make recommendations to the Planning Board and designate to the Planning Board trees to be saved by the applicant.
2. The Tree Warden shall submit a written report to the Planning Board which shall include, but not be limited to, trees which he has recommended for preservation and recommending whether there are other measures or amendments to the plan or map which the Planning Board should consider for the preservation of trees.

B. Board of Zoning Appeals

1. In the event that any trees are to be removed, cut, destroyed or substantially altered as a consequence of any application to the Board of Appeals for a variance or conditional use permit, then simultaneously with the submission of an application to said Board, the applicant shall submit to the Tree Warden a sketch or plan as provided in Section 197-12(B) of this chapter.
2. The Tree Warden shall review the application and submit his written recommendations to the Board of Appeals concerning the application.

§197-14 Required Removal of Trees.

A. Private property. Any tree growing on private real property which is endangering or, in the opinion of the Tree Warden or the Building Inspector of the Village of Brookville, constitutes a danger to a public street or a public utility shall be removed or trimmed by the owner of the real property within fourteen (14) days after the receipt of such notice from the Tree Warden or Building Inspector. In the event that the property owner fails to remove or trim such tree within said time, the Village may remove or trim said tree and assess the cost thereof against the property owner.

B. Public Property. Nothing herein shall limit the authority of the Village to remove or alter any tree or specimen tree it deems necessary to protect the health, safety and welfare of the Village residents.

§197-15 Replacement.

The Tree Warden may require the planting of the same or an agreed upon alternate 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 tree(s) or the ecological setting requires special consideration, as a condition to the issuance of a permit for tree removal. The location of planting of the replacement trees shall be agreed upon prior to issuance of the permit for removal.

§197-16 Appeals.

A. Any person aggrieved by any act or determination of the Building Inspector or Tree Warden in the exercise of the authority herein granted shall have the right to appeal to the Village Board of Appeals whose decision shall be final and conclusive.

B. An appeal shall be in writing stating the decision appealed from and reason for the appeal.

§197-17 Penalties for offenses.

A. Any person who shall violate any provision of this Chapter or any rule, regulation or specification promulgated thereunder shall be punishable by a fine of \$5,000 per violation.

Each tree that is removed, destroyed or substantially altered shall constitute a separate violation punishable as provided herein. In addition, any person convicted of violating the provisions of this Chapter may be required to replace, in kind, each and every tree removed, destroyed or substantially altered in violation of this Chapter. If a tree was so large and mature that it cannot be replaced, the court, upon recommendation of the Tree Warden, may require the planting of multiple trees.

B. The owner of real property shall be responsible for compliance with the provisions of this Chapter and shall remain responsible therefore regardless of the following: 1) that such compliance may be the result of the actions of any tree company, occupant, operator, contractor or other third party or agent on such real property; 2) that this chapter may also place certain responsibilities on a tree company, occupant, operator, contractor or other third party or agent; or 3) that there is an agreement between the owner and a tree company, occupant, operator, contractor or other third party or agent as to which party shall assume responsibility.

C. Notwithstanding Subsection B, a tree company, occupant, operator, contractor or other third party or agent or any other person not an owner of real property who performs an act in violation of this Chapter shall also be subject to the same fines provided in Subsection A.

§197-18 Construal of Provisions.

Nothing herein contained shall abridge or alter any rights or acts or remedies now or hereinafter existing, nor shall this Chapter, nor any provision thereof, nor any rule or regulation promulgated thereunder be construed as estopping the People of the Village of Brookville from exercising its rights and fulfilling its obligations to protect the public health, safety and welfare.

SECTION 2. Severability.

If any section, provision or part thereof in this local law shall be adjudged invalid or unconstitutional by a Court of competent jurisdiction, then such adjudication shall not affect the validity of the local law as a whole or any section, provision or part thereof not so judged invalid or unconstitutional.

SECTION 3. Effective Date.

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