

**Repeal of Tree Ordinance and replace with new Chapter
Revised 8-11-2016**

A LOCAL LAW to repeal in its entirety Chapter 270 of the Code of the Town of Yorktown entitled “TREES,” and replaced with a new Chapter 270 of the Code of the Town of Yorktown entitled “TREE ORDINANCE”

Be it enacted by the Town Board of the Town of Yorktown as follows:

Section I. Statement of Authority.

This Local Law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the provisions of the Statute of Local Governments, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II.

Chapter 270 of the Code of the Town of Yorktown entitled “TREES” is hereby repealed in its entirety and replaced with a new Chapter 270 of the Code of the Town of Yorktown entitled “TREE ORDINANCE” as follows:

ARTICLE I

Preservation of Yorktown’s Forested Environment

§ 270-1 Purpose.

- A. This chapter regulates certain activities in the Town relating to the cutting of trees. The purposes of the chapter are to:
- (1) Preserve, protect, conserve and regulate the forests, woodlands and trees and the benefits derived therefrom;
 - (2) Prevent uncontrolled, widespread cutting of trees;
 - (3) Prevent soil erosion; and
 - (4) Protect wetlands, water bodies and watercourses, air quality, vegetation, wildlife and fragile natural resources.

- B. It is the further purpose of this chapter to preserve the rights of property owners in the Town consistent with the purposes enumerated above.

§ 270-2 Findings.

- A. The Town Board finds that healthy trees stabilize the soil and control water pollution by preventing soil erosion and flooding, absorb air pollution, provide oxygen, yield advantageous microclimatic effects, have an intrinsic aesthetic quality, offer a natural barrier to noise and a natural habitat for wildlife and are integrally involved in fundamental ecological systems.
- B. The Town Board finds that cutting of trees can create, including but not limited to, surface drainage problems, increased municipal costs to control drainage, adversely affect air quality, impair the stability and value of nearby properties, adversely affect fundamental ecological systems and result in unsightly and barren conditions.

§ 270-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPROVING AUTHORITY

The Planning Board, the Town Board or the Town Engineer as specified in §270-6 of this chapter.

CONSERVATION BOARD

The duly appointed members of the Conservation Board.

PROTECTED TREE

A woody perennial, either deciduous or coniferous, having a diameter 8 inches or greater measured 4 1/2 feet above ground level ("DBH" hereafter), and any Street Tree as defined herein.

SPECIMEN TREE

Any Protected Tree with a DBH of 24" or greater

STREET TREE

A tree designated by the Approving Authority to be planted as part of an approved site plan and/or any tree whose base is at least 50% in the land enclosed by property lines on either side of a public right-of-way.

TREE CONSERVATION ADVISORY COMMITTEE

The duly authorized members of the Tree Conservation Advisory Committee.

§ 270-4 Activities Where a Permit is Required.

A permit under this chapter shall be required for the following activities

- A. Removal of 10 Protected Trees or more in an area 10,000 square feet or more.
- B. Removal of any tree which had been designated to be planted as part of an approved site plan and /or subdivision.
- C. Removal of more than 3 Protected Trees within any Town jurisdictional wetland or wetland buffer area within an 18 month period.
- D. Removal of any Specimen Tree.
- E. Removal of 10 Protected Trees in an area of 2,000 square feet or more which includes in total or in part a slope 15% or greater as determined by the Town of Yorktown topographic maps.

§ 270-5 Activities Where a Permit is Not Required.

A permit under this chapter shall not be required for the following activities:

- A. Normal maintenance such as trimming and pruning less than 20% of the tree crown area or bracing.
- B. The clearing, cutting or uprooting of less than 10 Protected Trees:
 - (1) Within 15 feet of an existing building or approved addition and within the footprint of any approved addition;
 - (2) Within 10 feet of an existing or approved subsurface structure such as a septic tank or field, or other subsurface improvement or within the septic field area as required by the Westchester County Health Department; or
 - (3) Within 5 feet of an existing or approved sidewalk or driveway or within the area occupied by a proposed driveway or sidewalk;
- C. The clearing, cutting or uprooting of trees authorized and conducted in accordance with a tree plan as part of a development approval plan or site plan approved by the Approving Authority;
- D. Removal of any tree which has been determined by an arborist certified by the International Society of Arboriculture to be dead, hazardous, damaged beyond salvaging or in an advanced state of decline.

- E. Removal of trees on a parcel that has an approved forest management or stewardship plan.
- F. Removal of trees which are designated invasive species by the New York State Department of Conservation (NYSDEC).
- G. Removal of any tree that creates an actual or ongoing emergency condition.
- H. Any removal of trees to be done by or on behalf of the Town of Yorktown.

§ 270-6 Approving Authority.

The Approving Authority under this chapter shall be as follows:

- A. The Town Board shall be the Approving Authority for any application, permit or approval for which the Town Board has authority pursuant to the local laws and ordinances of the Town.
- B. The Planning Board shall be the Approving Authority for any application, permit or approval for which the Planning Board has authority pursuant to the local laws and ordinances of the Town.
- C. The Town Engineer, or his designee, shall be the Approving Authority with respect to all other permit or approval under this chapter.

§ 270-7 Permit procedures.

- A. Application requirements. An application for a permit required by this chapter shall be filed with the Approving Authority and shall contain the following information and such other information as required, except when waived by the Approving Authority:
 - (1) The name, address and phone number of the property owner and applicant.
 - (2) The written consent of the property owner, if the applicant is not the property owner.
 - (3) The Tax Map designation of the property.
 - (4) A plan showing the following: the location of the property and property boundaries, the location of structures, driveways and roadways on the property and the location of the proposed tree removal.
 - (5) The location of wetlands, water bodies or watercourses subject to regulation under Chapter 178 of the Town Code.

- (6) The location of areas subject to regulation under Chapter 175 of the Town Code entitled Flood Damage Prevention.
- (7) The size, number, location and species of Protected Trees to be cut.
- (8) The estimated size, number, location and species of Protected Trees to be saved.
- (9) The location of any staging of clearing, cutting or uprooting of trees.
- (10) The location and size of loading areas for the removal of cut trees.
- (11) A plan for tree disposition and cleanup.
- (12) A statement from the property owner that each Protected Tree to be removed has been designated, with paint or other distinctive means, at two points so as to be readily visible to the Approving Authority and the tree remover. One point shall be low enough on the Protected Tree so as to be visible on the stump after the tree is removed.
- (13) A statement that the property owner will indemnify and hold the Town harmless against any damage or claims associated with the permit, including but not limited to the performance of on-site inspection by the Town.
- (14) An explanation as to why a proposed activity prompting the tree removal application cannot be located elsewhere on the property.

B. Referral.

- (1) In cases where the Approving Authority is the Town Board or the Planning Board the Town may refer any application submitted to it pursuant to this chapter to the Tree Conservation Advisory Commission and Conservation Board for review and report. The date of referral from the Approving Authority shall be deemed to be the date of the first regularly scheduled monthly meeting of the Tree Conservation Advisory Commission and Conservation Board after receipt of a complete set of pertinent materials from the Approving Authority.

The Approval Authority may require expert assessment of the existing forest on a site proposed for development. This assessment may include information on health, quality and function of the forest

- (2) The Tree Conservation Advisory Commission and Conservation Board shall report back to the Approving Authority within 30 days of such

referral. Failure by the Tree Conservation Advisory Commission or Conservation Board to report back within the specified time period shall be interpreted by these approving authorities as indicating no objection to the application.

- C. Notice. Upon receipt of a completed application under this chapter, the Approving Authority shall cause notice of receipt of the same to be mailed by certified mail to adjoining property owners and those across any street adjoining the involved property. For applications to the Town Engineer, such property owners shall have 20 days from said day of notice to submit written comment to the Approving Authority with regard to said application. For applications to the Planning Board or the Town Board such property owners shall be able to submit written comments to the Approving Authority up until such time as the required public hearings are closed by the Approving Authority.
- D. Public hearing. Except as otherwise provided herein, a public hearing may be held by the Approving Authority on the application made hereunder at such time or times, under such circumstances and upon such notice as may be required for the granting of the other permit or approval required of such Approving Authority when the approving authority is the Town Board or Planning Board pursuant to the local laws and ordinances of the Town. Notice of such hearing shall be issued and/or published in the same manner as is required by law for site plans and development approval plans. The Town Engineer may refer any application to the Town Board or Planning Board if it is determined that a public hearing on the application is appropriate.
- E. Action by the Approving Authority. The Approving Authority shall review said application to ensure conformity with the requirements of this chapter. A determination shall be made to approve, approve with modifications or disapprove the issuance of such permit simultaneously with the determination by the Approving Authority of any other permit or approval for which application was made.
- F. Appeal and review.
 - (1) Any decision or order of the Planning Board or Town Engineer or any officer or employee thereof made pursuant to or within the scope of this chapter may be reviewed by the Town Board at the request of any interested party, provided that such review is commenced by the filing of a notice of review with the Town Board within 30 days after filing of such order or decision with the Town Clerk.
 - (2) Judicial review. Any final determination, decision or order of the Approving Authority may be judicially reviewed pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for Westchester County.

§ 270-8 Standards for approval.

In granting, denying or conditioning any application for a permit required by this chapter, the Approving Authority shall evaluate the proposed activity, its purpose, and available alternatives, and shall determine that the impact of the proposed activity upon, including but not limited to, public health and safety, soil erosion, wildlife habitat, fire protection, and drainage will not be detrimental and shall be in accordance with the following additional standards, considerations and conditions:

- A. Trees shall be felled so that erosion is avoided. All tree cutting debris shall be kept at least 20 feet from all public roads and rights-of-way.
- B. Consideration shall be given to preserving Protected Trees where feasible and practical.
- C. Mitigation Measures. An applicant may be required by the Approving Authority to prepare and implement a tree replacement plan to offset the impacts of the proposed regulated activities. The minimum size of replacement trees shall be not less than one and one-half inch caliper or other determined by the Approving Authority. The mitigation measures shall not solely be determined by the size of the trees to be replaced but also by the function the trees provide in the location. Mitigation measures may also include but not be limited to installation of street trees, removal of invasive vegetation, removal of trees for public safety purposes, implementation of a forest management plan and installation of deer exclosures. If the Approving Authority requires payment of a fee to the tree bank fund to satisfy the unmet portion of the tree replacement requirements, the applicant shall pay a fee in such amount as set forth by the Approving Authority.

§ 270-9 Permit duration.

- A. Activities specified by the permit shall be undertaken pursuant to any conditions of same and shall be completed according to any schedule set forth therein.
- B. A permit shall expire upon completion of the permitted activity or one year from the permit's issuance, whichever shall first occur.
- C. A permit may be renewed by the Approving Authority for a period of up to one year, provided the terms and conditions of same have been observed and complied with as of the time of renewal.
- D. A permit may be revoked or suspended in accordance with the provisions of this chapter.

§ 270-10 Security.

In granting a permit, the Approving Authority determines an amount in security with specific conditions securing compliance with the provisions of the permit.

§ 270-11 Inspection and monitoring of activities.

- A. The Approving Authority may inspect or cause to be inspected by its designee or representative activities undertaken pursuant to a permit so as to ensure satisfactory compliance with its terms and conditions.

- B. The Approving Authority may require that the activities undertaken pursuant to a permit be monitored and/or supervised by an arborist certified by the International Society of Arboriculture including but not limited to the provision of written status reports at specified intervals with respect to the activities undertaken pursuant to the permit.

§ 270-12 Enforcement and Penalties for offenses

A. Administrative sanctions.

(1) Stop-work order.

- (a) The Town Engineer or designee may post a stop-work order for any tree removal activity if any of the following conditions exist:
 - [1] Any tree removal activity regulated under this chapter is being undertaken without a permit.
 - [2] Any of the conditions of the permit are not being met.
- (b) The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed.
- (c) In the case of work for which a permit has been duly issued, the stop-work order shall be delivered to the permittee or mailed by first-class mail to the address listed by the permittee on the permit. In the case of work for which there is no permit, the stop-work order shall be mailed to the person listed as owner of the property by the Town Assessor on the tax roll. Additionally, a copy of a stop-work order shall be posted on the site of the tree removal activity in reasonable proximity to a location where the tree removal activity is taking place.
- (d) If the permittee or person violating this chapter does not immediately cease the activity or comply with the tree permit or permit conditions, the

Approving Authority may revoke the permit or any other permit issued to the permittee by the Town for the same property.

- (e) If the owner or land user where no permit has been issued does not cease the tree removal activity, the Approving Authority may request the Town Attorney to obtain injunctive relief from a court of competent jurisdiction.
- (2) Restoration. The Town shall have the authority, following a hearing before the Approving Authority on written notice to the violator, to direct the violator to restore the affected areas its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Approving Authority or its designee. Such restoration may include measures outlined under Section 270-8 (C) of this ordinance. . Further, the Approving Authority shall be able to require an adequate bond in a form and amount approved by the Approving Authority to ensure the restoration of the affected area. Any such order of the Approving Authority shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the Approving Authority pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.
- (3)
- (4) The Town Engineer or designee shall enforce the provisions of this chapter and when necessary issue and serve appearance tickets in connection with any violation of this chapter.
- B. Civil damages. Any person who undertakes or procures any person to undertake any tree removal activity without the prior issuance of a permit hereunder or who otherwise violates any provision of this chapter or any permit restriction adopted by the Approving Authority pursuant to this chapter shall, in addition to any penal liability, be liable for any civil damages that might have been caused by such violation.
- C. Criminal sanctions.
 - (1) Any person who violates or procures any person to violate any provision of this chapter shall be guilty of a violation punishable by a fine that shall not exceed \$1,000 per Protected Tree for the first offense, plus an additional amount that shall not exceed \$50 for each inch of caliper up to 18 inches, and \$100 for each inch of caliper over 18 inches. Where the diameter of a removed Protected Tree (or trees) cannot be ascertained, the fine for a first offense shall not exceed \$2,500 for each Protected Tree unlawfully removed.
 - (2) For a second and each subsequent offense within a period of three years, the maximum fine shall be twice that applicable to a first offense or a term of imprisonment up to 15 days, or both.

- D. In addition to the remedies specified above, no building permit or permanent certificate of occupancy shall be issued to any property for which a stop-work order or notice of violation has been issued, until such violation has been remedied by restoration performed to the reasonable satisfaction of the Approving Authority or until such notice of violation has been dismissed by a court of competent jurisdiction.

Article II

Town-wide Forest Management

§ 270-13 Definitions

TREE BANK

Town-owned lands or Town right-of-way lands to be designated by resolution of the Town Board as receiver sites for off-site mitigation plantings to satisfy tree replacement requirements which cannot be met on-site.

TREE BANK FUND

A fund to be established by and administered in accordance with a resolution of the Town Board providing for the payment of fees as mitigation for removal of trees where tree replacement requirements cannot be met on-site.

§ 270-14 Tree Conservation Advisory Commission

- A. The Town of Yorktown Tree Conservation Advisory Commission shall cause the development of a Town-wide forest management plan based on the goals and regulatory criteria set forth in this chapter and including standards and specifications for Town-wide forest maintenance, protection and re-establishment and recommendations to the Town Board regarding the development of tree banks or tree bank fund as defined in this chapter. The forest management plan shall be approved by the Town of Yorktown Town Board and shall govern the sustainable use of trees located on public lands for commercial, conservation or recreational purposes, including but not limited to wood harvesting, biodiversity enhancement, bird watching, hiking, wildflower appreciation, picnics, hunting, trapping, water quality protection and the prevention of erosion and flooding

The Town-wide forest management plan shall identify and prioritize specific areas of the town in which mitigation as described in this ordinance may be accomplished. The plan shall be adopted by the Town Board and its implementation overseen by the Tree Conservation Advisory Commission. An annual report which shall describe status of implementation shall be presented to the Town Board.

- B. The Yorktown Tree Conservation Advisory Commission shall conduct public outreach and education.

Article III

Arbor Day

§ 270-15 Recognition of Arbor Day

- A. To recognize the benefits trees provide, the last Friday of every April shall be designated Arbor Day in the Town. Arbor Day shall be used to facilitate tree planting within the Town.
- B. The Planning Department shall coordinate and conduct Arbor Day ceremonies designed to facilitate tree planting within the Town, particularly along Town roads, in Town parks and open spaces and in or around wetlands.

Section III. Severability.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

Section IV. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section V. Effective Date.

This Local Law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.