

RESOLUTION SETTING PUBLIC HEARING TO CONSIDER LOCAL LAW
ESTABLISHING NEW TREE PRESERVATION REGULATIONS BY CREATING
CHAPTER 253, TREE PRESERVATION

WHEREAS, the Village Board of the Village of Sag Harbor seeks to enact a local law establishing regulations are intended to reduce tree canopy loss and implement tree management improvements through requirements for tree protection, tree preservation, the planting and replanting of trees and the maintenance of existing trees within the Village; and

WHEREAS, in furtherance of this goal, the Board of Trustees is considering enacting a local law creating tree preservation legislation by creating Village Code Chapter 253, Tree Preservation; and now, therefore be it

RESOLVED, that a public hearing on this local law shall be held on Tuesday, October 10, 2023, at 6:00 P.M. or as soon thereafter as the matter may be heard, at the Sag Harbor Village Municipal Building located at 55 Main Street, Sag Harbor New York, 11963 and via videoconferencing, to consider a Local Law creating Village Code Chapter 253, Tree Preservation; and be it further

RESOLVED, that the Village Clerk is hereby directed to refer this local law to the Suffolk County Planning Commission, the Village of Sag Harbor Planning Consultant, Nelson Pope & Voorhis to conduct the necessary SEQRA review, and if necessary to refer the proposed law to the Harbor Committee for LWRP Consistency Review.

INTRODUCTORY LAW NO. LOCAL LAW NO. OF 2023

Be it enacted by the Village Board of Trustees of the Village of Sag Harbor as follows:

A LOCAL LAW to create Village Code Chapter 253, Tree Preservation

SECTION 1. Legislative Intent.

The Village of Sag Harbor is a unique village whose character is defined by the natural and historic environment. In addition to its rich architectural history and harbor setting, the mature tree canopy, abundance of trees and vegetation are of foundational importance to the Village. Established street trees throughout the village, specimen and mature trees, vegetation on developed and undeveloped lands and along the waterfront, all add to the character of the Village. The Village seeks to encourage the protection and maintenance of trees on all public and private lands.

The Village Board of Trustees hereby finds and declares that the preservation of trees is necessary to protect the health, safety and general welfare of the Village of Sag Harbor and of its residents because trees provide shade, impede soil erosion, aid in water absorption and retention,

inhibit excess runoff and flooding, enhance air quality by absorbing carbon dioxide and releasing oxygen, mitigate noise, provide a natural habitat for wildlife, provide screening, conserve energy, enhance property values and add to the aesthetic quality and character of the entire community. It is, therefore, the purpose of this chapter to protect existing healthy trees and to encourage the planting of new trees in appropriate locations on all private and public properties throughout the Village.

SECTION 2. Amendment. Please see the following and create Village Code Chapter 253 Tree Preservation by adding those words that are underlined:

Chapter 253. Tree Preservation

§253-1. Definitions.

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

APPLICANT

The property owner, or his/her duly authorized agent, requesting a tree removal permit from the Town pursuant to this chapter.

APPROVAL AUTHORITY

The Village of Sag Harbor Building Inspector, upon consultation with an ISA (International Society of Arboriculture) Certified Arborist, will have approval authority for tree removal and building permit applications. The Board of Historic Preservation and Architectural Review upon consultation with the Village of Sag Harbor Environmental Consultant/Planner or ISA Certified Arborist, shall have approval authority for revegetation plans. In the case of applications for site plan and/or special permit approval the approval authority shall be the Village of Sag Harbor Planning Board upon consultation with an ISA Certified Arborist and/or the Village of Sag Harbor Environmental Consultant.

CLEARING

Any activity that changes or removes established vegetation within a vacant lot or previously undeveloped area of a lot, including trees and understory. Clearing shall not include the removal of trees including those trees that are smaller than a DBH of 18 inches. The removal and/or maintenance of dangerous dead wood and non-native, invasive species shall not qualify as “clearing”.

DBH (DIAMETER AT BREAST HEIGHT)

The diameter or caliper of a tree measured at a point 4 1/2 feet above ground level at the base of the uphill side of the tree.

DRIPLINE

An imaginary, roughly circular line extending from the maximum spread of the limbs of a tree to the ground.

REVEGETATION

The restoration of the floral component of an ecological community where some or all of the vegetation has been removed. Typically, this process consists of planting indigenous species of trees, shrubs and/or grasses at a sufficient size and density to mimic an adjoining or nearby plant community in appearance and/or function. Most ecological communities are characterized by woody vegetation but some (i.e, grasslands, tidal marshes, etc.) may be characterized by herbaceous vegetation.

TREES SUBJECT TO THIS CHAPTER

A living, woody plant with an erect perennial trunk and a definitely formed crown of foliage and a DBH of eighteen (18) or more inches.

TREE PRESERVATION PLAN

A plan or survey indicating the location, species, size, dripline and health of all trees on a property which are eighteen or more inches in DBH as determined by a certified arborist and detailing the methods and practices to be used to provide protection for all such trees to be preserved.

TREE REMOVAL

The act of removing a tree(s) subject to this preservation legislation or a percentage of its root system that could cause the tree to die within a one-year period.

TREE REMOVAL PERMIT

A permit granted pursuant to the requirements of this chapter which allows the removal of one or more trees. When issued in connection with a building permit, the tree removal permit shall constitute part of the building permit and be processed in conjunction therewith.

253-2. Regulated Activities; Permit Required.

- A. Except as specifically permitted elsewhere in this Chapter, it shall be unlawful to remove a tree subject to this preservation legislation, unless a tree removal permit is granted pursuant to the requirements of this Chapter.
- B. Clearing a property without a tree removal permit, site plan approval, and/or building permit shall be unlawful and the property owner shall be required to revegetate the property as set forth herein.

§ 253-3. Unregulated Activities Permit Not Required

The following tree related activities are permitted without a permit:

A.

Removal of any dead, diseased or severely damaged tree, if determined to be in such condition by an ISA Certified Arborist.

B.

Removal of any tree under an actual or ongoing emergency condition when such tree removal is necessary for the protection and preservation of life or property such as after a hurricane or ice storm.

C.

The removal of trees in connection with duly authorized activities of the Village of Sag Harbor or any department thereof.

D. The removal of trees with a DBH of less than eighteen (18) inches.

§ 253-4. Permit application process; approval authority.

- A. Any person or property owner proposing to remove a tree(s) subject to this on any property in the Village of Sag Harbor shall file an application for a tree removal permit with the approval authority, as herein provided. Building Permit applications shall require the submission of a tree removal permit at the discretion of the approval authority. The approval authority shall make its determination based, in part, on the report from an ISA Certified Arborist and the information submitted as a part of the application.

- B. Any person or property owner that has cleared a lot or removed trees without a tree removal permit and/or proper approvals, shall be required to file an application for a tree removal permit to the Building Inspector. The Building Inspector shall require a revegetation plan and refer the application to the Board of Historic Preservation and Architectural Review (BHPAR). The BHPAR shall consider the revegetation plan upon consultation with the Village's Environmental Consultant/Planner and/or based upon consultation of a report from an ISA Certified Arborist submitted by the applicant at its discretion. Any fees associated with the Village Environmental Consultant/Planner and/or ISA Certified Arborist review shall be charged back to the applicant pursuant to Village Code Chapter 130.

- C. The application shall include the following information, unless waived by the approval authority, and such other additional information and/or certification as the approval authority determines to be necessary or appropriate:

(1)

The name, address and telephone number of the property owner and, if different, the applicant.

(2)

The street address and Tax Map designation of the subject property.

(3)

If the owner is not the applicant, a statement of authority from the owner to make said application.

(4)

A report provided by the property owner prepared by an ISA Certified Arborist providing a description of the proposed tree removal, its purpose and detailing the tree health, size, root system and recommendations regarding removal.

(5)

A survey at a scale of not less than one inch equals 40 feet, of the property showing the area to be disturbed and indicating the specific tree(s) proposed to be removed, the location of any existing and proposed improvements on the property, a tree preservation plan for all trees which are to be preserved, and any additional information that the approval authority may deem necessary or appropriate for the proper evaluation of the application. All plans for the protection of trees shall include the protection of potentially impacted off-site trees.

(6)

A plan of mitigation measures, including replanting, designed to reduce the potential impacts of tree removal, such as flooding, erosion, sedimentation, loss of buffer screening and/or disturbance of wildlife habit.

(7)

For all applications, an application fee shall be required in the amount to be determined by the Board of Trustees by resolution. In addition, the fees of the ISA Certified Arborist shall be charged back to the applicant. In the case of an application involving the removal of one tree, the application fee may be waived or reduced, at the discretion of the Approval Authority, where it is determined that adequate mitigation, in terms of tree replacement, is provided.

(8)

Signature of the applicant attesting to the accuracy of all information submitted as a part of the application.

D. Applications for permits shall be submitted not less than 10 workdays prior to the proposed tree removal date.

E. All information related to the permit application shall be maintained on file in the office of the Village Building Department and maintained as part of the building files for that property.

§ 253-5. Determination by approval authority.

A.

In making a determination whether to grant, deny or grant with conditions a tree removal permit, the approval authority shall consider the following factors:

(1)

Whether the proposed tree removal is consistent with the purpose and intent of this chapter.

(2)

Whether the tree or tree(s) to be removed are of a species listed on the New York State Rare Plant List as endangered or threatened trees.

(3)

The need for the proposed tree removal.

(4)

The availability of reasonable and practical alternatives to the proposed tree removal.

(5)

The condition of the tree or trees proposed to be removed as determined by the ISA Certified Arborist.

(6)

The location of the tree(s) proposed to be removed and their dripline(s) with respect to existing and proposed site improvements.

(7)

The applicant's proposed mitigation measures, including the planting of new trees of similar or greater size or other vegetation, erosion and sedimentation controls, drainage improvements, etc.

B.

Any permit issued pursuant to this chapter shall contain all such conditions as may be determined appropriate by the approval authority to ensure both initial and continued compliance with the intent and requirements of this chapter.

E.

The Building Inspector, or his designee, may suspend or revoke a tree removal permit by issuing a stop-work order if he finds that the applicant has not complied with one or more of the conditions of the issuance of such permit or has exceeded the authority granted in the permit or has failed to undertake the project in the manner as set forth in the approved application. Similarly, a stop-work order may be issued if no tree removal permit has been issued and a tree or trees are about to be, or are in the process of being removed.

F.

Permits shall be valid for a period of six months unless a different period is specifically stipulated in the permit issued by the approval authority. Permits may be renewed by the approval authority upon the applicant's submission of a renewal request and a fee in the amount of \$150 at least 20 workdays before the expiration of the permit. Standards for the issuance of a renewal permit shall be the same as those for the issuance of the original permit.

G.

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with all other applicable provisions of any federal, state or local law or regulation, including, but not limited to, the securing of any other required permit or approval.

H.

A copy of any tree removal permit which is granted shall be immediately and prominently displayed along the street frontage of the subject property until all approved work is completed and approved by the Building Inspector.

§ 253-6. Public utilities.

Any person doing business as a public utility subject to the jurisdiction of the New York State Public Service Commission and any duly constituted public agency authorized to provide public utility service is hereby granted a continuing permit to trim, remove or perform such other acts with respect to trees growing adjacent to the public streets of the Village, or which grow upon private property to the extent that they encroach upon such public streets, as may be necessary to comply with the safety regulations of said Commission and as may be necessary to maintain the safe operation of its business.

§ 253-7. Trees in streets and other public places.

Trees in streets or other public places in the Village shall be subject to Village Code §235-13, Trees and fences.

§ 253-8. Appeals.

A.

Any determination made by the approval authority may be appealed, within ten (10) days of receipt of the determination, to the Village Board of Trustees. The appeal must be in writing, site the specific nature and reasons for the appeal and be filed in the Building Department and Village Clerk's Office. A hearing shall be held within thirty (30) days of the appeal being filed in the Building Department and Village Clerk's Office (if not filed simultaneously, whichever date is later). The Village Board of Trustees shall consult with the approval authority, including the ISA Certified Arborist, and make a determination by resolution at the next scheduled Board of Trustee meeting. The Village Clerk shall send notification to the appellant of the determination within five (5) days of the Village filing.

B.

Any appeal from the determination of the Village Board of Trustees shall be made by commencement of an action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules within 30 days of the filing of the Village Board of Trustees determination.

§ 253-9. Inspections.

Any site for which a tree removal permit application has been submitted or required by the Building Inspector shall be subject to inspection by representatives of the Village of Sag Harbor including but not limited to the Building Inspector, his designee and/or his ISA Certified Arborist consultant at any reasonable time, including weekends and holidays. The applicant, by reason of making application for such permit, shall be deemed to have granted its consent for such inspection.

§ 253-10. Action upon completion of work.

A.

Within 30 days after completion of all tree removal activities authorized under a permit issued in accordance with this chapter, the applicant shall notify the approval authority of such completion.

B.

Within 30 days of such notification of completion, the approval authority, or its duly authorized representative, shall inspect the tree removal site for compliance with all conditions of the permit.

C.

When all tree removal activities authorized under a permit have been deemed to be completed in an acceptable fashion, the approval authority, or its duly authorized representative, shall issue a certificate of completion, which shall be accompanied by the cancellation or return of any bond or any other security collected in connection with said permit.

D.

If the tree removal activities are found to be unacceptable, the approval authority shall so notify the applicant. Such notification of noncompliance shall include a list of all conditions which are in violation of the terms of the permit and shall specify a time limit for the correction of all such violations.

§ 253-11. Local Government Liability Disclaimer.

Nothing contained in this law shall be deemed to impose liability upon the Village, the Village Board of Trustees, the approval authority or individuals, companies or corporations hired by the Village, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant that he/she planted in the right-of-way of a public street or that is on his/her property from constituting a hazard to the subject property or neighboring properties, or an impediment to travel or vision upon any street, sidewalk, park or other public place within the Village of Sag Harbor.

§ 253-12. Penalties for offenses.

- A. Any property owner or person who shall violate any of the provisions of this chapter, or any rule, regulation or specification promulgated thereunder, shall be deemed guilty of an offense and, upon conviction thereof, shall be fined not more than \$1,000. Each tree removed or substantially damaged may be considered a separate offense and shall be punishable as such hereunder. As an alternative to the payment of the above-stated monetary fines, or in combination therewith, the person who has committed the offense may be required to replace any tree(s) unlawfully removed or substantially damaged with new trees, of a type, size and location as determined appropriate by the approval authority, or his/her duly authorized designee, up to a maximum size equal to the total DBH of all trees unlawfully removed or damaged.
- B. At the discretion of the Building Inspector, a stop work order pursuant to Village Code §92-12 may be issued to any property owner or person who shall violate any of the

provisions of this chapter, or any rule, regulation or specification promulgated thereunder while there is an open or active building permit on file with the Building Department.

SECTION 3. Amendment. Please see the following and amend Village Code §300-9.11 Supplemental use and dimensional regulations, by deleting those words that are stricken and adding those words that are underlined:

A.

Clearing. No clearing of any lot or parcel of land ~~for an activity which requires a building permit~~ shall occur except incidental to and after the issuance of a tree removal permit pursuant to Chapter 253. ~~such building permit. See § 300-17.2H for building permit application requirements related to clearing.~~

B. Tree Preservation shall be governed by Chapter 253.

SECTION 4. Amendment. Please see the following and amend Village Code §92-8 Issuance of a building permit, by deleting those words that are stricken and adding those words that are underlined:

§ 92-8 **Issuance of building permit.**

F. Every application for a building permit proposing to remove trees as defined in Chapter 253-1 shall include a tree removal permit application pursuant to Chapter 253, Tree Preservation.

SECTION 5. Authority.

The Village of Sag Harbor hereby enacts this legislation pursuant to NYS Municipal Home Rule Law.

SECTION 6. 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, the judgment shall not affect, impair or invalidate the remainder of this local law but shall be confined in its operation to the clause, sentence, paragraph, section or part of this local law that shall be directly involved in the controversy in which such judgment shall be rendered.

SECTION 7. Effective Date.

This chapter shall take effect immediately upon filing in the office of the Secretary of State pursuant to the Municipal Home Rule Law.