

PROPOSED LOCAL LAW B – 2020

A Local Law amending Chapter 318 of the Code of the Village of Mamaroneck (Trees) regarding the regulation of trees in the Village of Mamaroneck.

**BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK
AS FOLLOWS:**

Section 1.

Section 296-11 of the Code of the Village of Mamaroneck is repealed.

Section 2.

Chapter 318 of the Code of the Village of Mamaroneck (Trees) is repealed and replaced with the following:

Chapter 318 Trees

Article I Purpose and definitions

§ 318-1 Purpose.

The Board of Trustees finds and determines that mature trees contribute to the character of a neighborhood and increase property values. Mature trees help stabilize soil, clean water, and reduce the risk of soil erosion and flooding by absorbing rainfall. Sufficient tree canopy provides shade that mitigates heat, reduces cooling costs and increases a community's foot traffic. Mature trees reduce air pollution and its related respiratory effects; they remove carbon dioxide from the air, release oxygen, and slow climate change. Trees also temper noise, enhance privacy and provide wildlife habitat. They give visual continuity to neighborhoods and make them more welcoming in appearance. A tree's ability to absorb carbon and provide other benefits increases as it ages, so the preservation of mature trees is requisite for achieving the full benefits of an urban forest. Trees are a community asset that contribute to the public good regardless of where they are, whether they are on private or public property.

Studies show that a minimum tree canopy cover of forty percent is the threshold needed to reap the full benefits of trees. A goal of the Board of Trustees, supported by the Tree Committee, is to achieve a minimum tree canopy coverage of forty percent and maintain it on an ongoing basis.

The Board of Trustees further finds and determines that indiscriminate and uncontrolled destruction of trees, including clear cutting, causes greater municipal costs for proper drainage control and water treatment, lowers the value of neighboring property, creates barren and unsightly conditions, and has adverse effects upon the health, safety, environment, ecosystems, and general well-being of the residents of the Village.

The purpose of this chapter is to preserve trees, to minimize damage to and removal of trees, and to increase the tree canopy of the Village of Mamaroneck.

§ 318-2. Definitions.

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

ANSI A300 STANDARDS

The standards with respect to the care and treatment of trees developed by the American National Standards Institute and designated as ANSI A300, a copy of which is available for public review in the office of the Building Inspector.

APPLICANT

Any person who or entity which has submitted an application for a permit to remove a tree.

CERTIFIED ARBORIST

An arborist certified by the International Society of Arboriculture (ISA).

CLEAR CUTTING

The removal of 30 percent or more of the healthy trees eight inches or more in Diameter at Breast Height (DBH) from any property over any five-year period.

DANGEROUS TREE

A dead or diseased tree which constitutes a hazard to life or property, including other trees, or harbors insects, fungus or diseases which constitute a potential threat to other trees by reason of death or disease.

DESTRUCTIVE PRUNING PRACTICES

Pruning a tree or shrub in a manner that does not comply with ANSI A300 Standards.

DIAMETER AT BREAST HEIGHT (DBH)

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

DRIP LINE

The roughly circular line defined by the points extended from the maximum spread of the limbs of a tree to the ground.

EMERGENCY CONDITION

A condition in which severe weather, storms, natural or non-natural causes severely affect the integrity of a tree, posing an immediate threat to life, property or the general public.

GUY WIRE

A tensioned cable designed to add stability to a free-standing structure.

INJURE

Any act that may cause a tree to die within a three-year period from the date of the act, including, but not limited to, chopping into the tree, scarring the trunk of the tree, driving nails into the trunk or limbs of the tree, stripping the tree of bark, engaging in destructive pruning practices, severing the tree's roots, removing or compacting soils or changing the grade within the drip line, storing materials or equipment within the drip line, setting a fire in, on or near the trunk of the tree or under its branches, intentionally applying chemicals in quantities harmful to the tree or the soil within the drip line or pouring or depositing oil, gasoline, tar, creosote, salt or other injurious substances on the soil within the drip line.

PERSON

Any individual or entity and, in the case of an entity, any officer, employee or agent of the entity.

PLANNING BOARD

The Planning Board of the Village of Mamaroneck.

PROTECTED TREE OR SHRUB

Any of the following:

- A. A tree with a DBH of eight inches or more, regardless of location;
- B. A tree with a DBH of three inches or more located in a wetland or wetland adjacent area, as defined in § 192-2 of this Code;
- C. A tree with a DBH of three inches or more located on a steep slope;
- D. A tree designated as protected on a site development plan or tree preservation plan approved by the Planning Board;
- E. A significant tree or shrub; or
- F. A tree with a DBH of three inches or more designated by the New York State Department of Environmental Conservation as a protected native plant for our region.

PRUNE

Cutting the leaves or branches of a tree or shrub in order to remove dead or diseased foliage or branches, control or direct growth, increase quality or yield of flowers or fruit or ensure the growth position of the main branches to enhance structural strength and safety of the tree.

RIGHT-OF WAY

The unpaved area owned by the village, county or state adjacent to the paved surface of a village, county or state road.

SHRUB

A low-growing evergreen or deciduous woody plant that is naturally smaller than a tree and produces multiple stems instead of a single trunk.

SIGNIFICANT TREE OR SHRUB

A tree or shrub on public property designated by a certified arborist as having historic or unique value because of its unique or noteworthy characteristics or intrinsic value, including, but not limited to, its species, age, location, historical significance, ecological value, or incomparable or irreplaceable aesthetic benefit to the community or environment, such as a "Champion" tree listed on an accredited tree registry, or shown to be of comparable size to a listed tree, a tree or shrub of a rare or endangered species on federal or state lists, or specimen tree or shrub exhibiting qualities such as noteworthy leaf color or shape, peeling bark, floral display, fruit, overall form or habit, unique wildlife habitat support, or rarity. No later than August 1, 2021, the Village Manager will cause to be prepared a list of significant trees. The list will be available for public inspection in the Village Manager's office.

STEEP SLOPE

Any ground area where the grade changes by one or more feet of vertical rise for each four feet of horizontal distance.

STREET TREE

A tree located within the Village right-of-way.

STUMP

The part of a tree attached to the root that remains after the trunk is cut.

SUBSTANTIALLY WOODED LOT

A lot greater than 4,000 square feet in area with, on average, one tree or more for every 500 square feet of lot area.

TREE

A living deciduous or coniferous plant with an upright perennial trunk and a definitively formed crown of foliage.

TREE CANOPY

The spread of leaves, branches and stems of a tree.

TREE COMMITTEE

The Tree Committee established by this chapter.

TREE CONTRACTOR

A person or entity in the business of removing trees for a fee.

TREE PRESERVATION PLAN

A plan of property approved by the Planning Board in conjunction with a site plan and subdivision plat showing contours of the entire plot at intervals of not more than two feet and the location, species, DBH and condition of all trees eight inches DBH or greater, identifying all trees to be removed and all trees to remain and detailing the methods and practices to be used to provide protection from injury during construction for all trees that will remain.

TREE REMOVAL PERMIT

A permit issued under this chapter authorizing a person to remove a tree or trees.

TREE TOPPING

The cutting back of the vertical stem (leader) and upper primary limbs (scaffold branches) of a tree.

Article II Tree Committee

§ 318-3 Establishment of the Tree Committee.

The Tree Committee created by Local Law 1 of 1988 is continued, as follows:

- A. Composition.** The Tree Committee will be comprised of seven volunteer residents of the Village of Mamaroneck appointed by the Board of Trustees.
- B. Terms of office.** Members of the Tree Committee will each serve for one three-year term and may be reappointed for a second consecutive three-year term. Each member may be appointed for additional terms following a one-year hiatus at the end of each six-year rotation.
- C. Chairperson and secretary.** The Board of Trustees will designate a chairperson and the Tree Committee will select a secretary from among the members of the committee.
- D. Meetings.** The Tree Committee will meet at such times as it deems appropriate to accomplish its purposes. All meetings will be convened and conducted in accordance with the requirements of the Open Meetings Law.

§ 318-4 Duties and Responsibilities.

The Tree Committee must:

- (1) Study, investigate, review, develop and/or update annually and administer a written plan, presented annually to the Board of Trustees, for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas, with an estimate of the costs in hours to be worked by Village employees and the cost of nursery stock to be used;**
- (2) Follow, revise and update Village of Mamaroneck's Tree Management Plan as needed;**
- (3) Make recommendations to the Board of Trustees regarding (a) the preservation and replenishing of trees, woods and landscaping so as to minimize undesirable environmental impacts and further beautify the Village in furtherance of the health, safety and welfare of present and future Village residents; (b) propose shade tree planting, landscaping and other beautification projects to be performed by the Village throughout its various rights-of-way and Village-owned properties; and (c) such other matters as it deems appropriate for the preservation and replenishment of trees throughout the Village;**
- (4) Develop and recommend a policy for replanting and restoration agreements;**
- (5) Review and document violation conditions in its annual report;**
- (6) Provide education for Village residents about tree preservation, tree risk assessment, appropriate tree choices for given site conditions and any other aspects of tree stewardship;**
- (7) Advise Village boards, committees or departments on tree-related matters;**
- (8) Review site development plans and environmental impact statements upon request by the Planning Board;**
- (9) Consult with the Village Engineer regarding utility vegetation management and street tree issues;**
- (10) Develop, maintain and file with the Village a list of species of trees which the Tree Committee recommends as suitable for planting in the Village of Mamaroneck; and**
- (11) Review any proposal by the Village Manager or the Village Manager's designee to remove a tree on public property.**

Article III Trees on public property

§ 318-5 Protecting trees on public property.

A. No person, including a person employed by or acting on behalf of a public utility, may

- (1) Remove a tree on public property without the approval of the Village Manager or the Village Manager's designee, granted after consultation with the Tree Committee;**
- (2) Attach a sign or poster to a tree on public property;**
- (3) Injure or destroy any tree on public property;**

- (4) Prune, spray, treat cavities, fertilize, cable, brace or otherwise treat or cause to be treated a tree on public property, except at the direction or with the approval of the Village Manager or the Village Manager's designee and in accordance with ANSI A300 Standards;
 - (5) Climb a tree on public property with the aid of spurs;
 - (6) Pass any public service utility wire through the branches of a tree on public property without sufficient insulation to prevent damage to the tree;
 - (7) Attach a guy wire to a tree on public property in such a manner as to girdle or restrict the growth of the tree; or
 - (8) Attach a guy wire or cable to a tree on public property except by means of a lag hook screwed into the trunk or an eyebolt passing through the trunk.
- B. No person, including any person or entity engaged by any person to treat any tree on public property, may treat a tree on public property without the permission of the Village Manager or the Village Manager's designee.
 - C. Any person who removes a tree on public property or causes a tree on public property to be removed, must, within six months after doing so, remove the stump and all debris from the disturbed area, backfill all holes and leave the area graded and covered in a manner acceptable to the Village Manager or the Village Manager's designee.
 - D. The Village Manager or the Village Manager's designee may
 - (1) cause trees on public property to be fertilized, pruned and sprayed;
 - (2) cause trees on public property to be removed after consultation with the Tree Committee; and
 - (3) take other measures the Village Manager or the Village Manager's designee deems necessary to control and prevent the spread of insects or disease to trees.

§ 318-6 Planting trees on public property.

No person may plant a tree on public property without a permit granted by the Village Manager or the Village Manager's designee.

- A. All trees on public property must be planted in accordance with ANSI A300 Standards and such other requirements as may be determined by the Village Manager or the Village Manager's designee in consultation with the Tree Committee, except as may be modified by the Village Manager or the Village Manager's designee where the particular circumstances of the planting so require.
- B. The Village Manager or the Village Manager's designee may accept monetary donations for the planting of non-invasive trees on the list of suggested street tree species established by the Tree Committee to be planted on municipal property or right-of-way, in accordance with the requirements of this section. The Tree Committee may not authorize the planting of trees that are not on the list of suggested street tree species.

ARTICLE IV Trees on Private Property

§ 318-7 Maintenance of trees on private property.

- A. Every owner of private property on which any tree, shrub or other planting is located must, at the property owner's expense:

- (1) prune the branches of any tree, shrub or other plant on the owner's property obstructing or overhanging any right-of-way within the Village so that the branches do not obstruct the clear space between the surface of the street or sidewalk and eight feet above the surface of the street or sidewalk, obstruct the light from any street lamp, obstruct the view of any street intersection or any traffic control device or interfere with utilities; and
 - (2) remove, when directed by the Village Manager or the Village Manager's designee, any dangerous tree located on the owner's property.
- B. If the property owner fails to satisfy the property owner's responsibility under subsection A of this section, the Village Manager or the Village Manager's designee may:
 - (1) cause the tree, shrub or other planting to be pruned, without notice to the property owner, at the property owner's expense; or
 - (2) direct the owner of the property to remove or prune the tree, shrub or other planting so that it complies with the requirements of this section.
- C. If the property owner fails to comply with the direction of the Village Manager or the Village Manager's designee within 30 days after the date on which that direction is given, the Village Manager or the Village Manager's designee may cause the tree, shrub or other planting to be removed or trimmed or the dangerous tree to be removed and charge the cost of doing so to the property owner. If the property owner does not pay that cost within 30 days of the date on which notice of the cost is served on the property owner, the property owner must pay a penalty of five percent of the amount due. The property owner must pay a further penalty of one percent of the amount due for each succeeding month or any portion of the month during which the charge is not paid. The Village Clerk/Treasurer will cause any charges and penalties under this section that remain unpaid for 60 days to be added to the Village tax bill for the property on the next succeeding tax roll. Unpaid charges and penalties are a lien on the real property so affected.
- D. Village right to enter private property. When a complaint is filed that a dangerous tree exists on private property, the Village Manager or the Village Manager's designee, upon determining that there is reasonable cause to believe that the tree is dangerous, may enter upon private property to determine if the tree is a dangerous tree and to treat or remove the tree.
- E. Construction damage. Any tree damaged or removed without permission during construction or the development of any property must be replaced in kind. Where it is not possible to replace an existing tree in kind due to its size or maturity, the tree must be replaced by multiple trees collectively equal in size to the tree that was damaged. Minor tree damage must be repaired in accordance with ANSI A300 Standards.
- F. The Board of Trustees may authorize the planting of a tree on private property at the expense of the Village upon obtaining the consent of the property owner and determining that the planting of the tree will serve the purposes and provide the benefits of trees identified in this chapter. The property owner must execute an agreement, acceptable in form to the Village Attorney, acknowledging that the tree, once planted, is the responsibility of the property owner.

§318-8 Removal of trees on private property.

- A. Prohibitions. No person may, without a permit issued by the Building Inspector, either purposely or negligently, engage in clear-cutting or injure any protected tree on private property.**
- B. Removal of protected trees in accordance with a permit issued by the Building Inspector. The Building Inspector may grant a permit to remove a protected tree on private property, to the extent necessary, if:**
 - (1) the protected tree is within a distance of 10 feet around the perimeter of a building or structure; or**
 - (2) the Village Manager, the Village Manager's designee, or a certified arborist chosen by the Village Manager or the Village Manager's designee and paid for by the property owner, determines that the tree is dead or so substantially diseased that it constitutes a potential danger to life and property, or harbors insects or diseases which constitute a potential threat to other trees within the Village; or**
 - (3) the protected tree interferes with a permitted use of the property and/or is specifically identified for removal in an approved wetland permit, special use permit, subdivision plat, site plan or landscape plan; or**
 - (4) the location of the protected tree prevents compliance with state, county or local laws or regulations for visual obstructions, sight lines, driveways or intersections.**
- C. The Building Inspector may not grant a permit to remove a protected tree on private property if:**
 - (1) the property owner seeks a permit to remove more than three protected trees;**
 - (2) the property owner has removed more than three protected trees from the property during the preceding 36 months; or**
 - (3) more than two trees have been removed from any wetland area on the property during the preceding 24 months by the property owner or any prior owner.**
- D. No permit is required for the removal of a tree or trees in accordance with a tree preservation plan approved by the Planning Board.**
- E. No tree may be removed while an application for site development plan approval or subdivision plat approval for the property on which the tree is located is pending before the Planning Board.**
- F. Permit procedure.**
 - (1) Application for permit. An application for a permit under this section must be made in writing on the form prescribed by the Building Inspector.**
 - (2) Fee. The fee for the application will be as set forth in § A347-1 of this Code and must be paid at the time the application is submitted.**
 - (3) Action on tree removal permit application. The Building Inspector will either approve or deny the application within 21 days from the date on which a completed application is submitted, except that the Building Inspector may not grant an application made in connection with construction which requires a building permit until the building permit is issued.**

G. Conditions. In granting a permit under this section:

(1) the Building Inspector must require, as a condition of the tree removal permit, that:

- (a) the applicant replace each tree that is removed with a non-invasive tree species of a similar mature height and of a size determined in accordance with the following schedule:**

| DBH of tree removed (inches) | Replanting requirement |
|-------------------------------------|---|
| Under 8 | No replanting necessary |
| 8 to 12 | One two-inch to 2 and 1/2 inch DBH tree |
| 13 to 25 | Two two-inch to 2 and 1/2 inch DBH trees |
| 26 to 40 | Three two-inch to 2 and 1/2 inch DBH trees |
| 41 or greater | Four two-inch to 2 and 1/2 inch DBH trees |

- (b) for three or more tree replacements within five years, the property owner must submit to the Building Inspector a plan identifying the proper location for each replacement tree; and**

(2) the Building Inspector may require, where extensive tree cutting is planned, that the applicant pay the cost of a certified arborist assigned by the Building Inspector to supervise the tree removal and ensure the protection of the existing trees.

H. Any applicant who has been denied a tree removal permit may appeal to the Village Manager or the Village Manager's designee. The appeal must be submitted in writing to the Village Manager or the Village Manager's designee within 30 days of the determination. In determining an appeal, the Village Manager or the Village Manager's designee may consult a certified arborist selected by the Village Manager or the Village Manager's designee and paid for by the property owner.

I. All tree planting and associated restoration work must be substantially completed within twelve months from the date the permit is issued, unless the permit is extended by the Building Inspector, in the Building Inspector's reasonable discretion. The Building Inspector may revoke any permit if the work is not proceeding according to permit.

J. Emergency Removals. If the Village Manager or the Village Manager's designee determines that a tree is hazardous to life or property, the Village Manager or the Village Manager's designee may grant a permit for the immediate removal of the tree without following the procedures or requirements otherwise required by this section, but no tree 18 DBH or greater may be removed on an emergency basis by reason of disease without submitting to the Building Inspector a detailed report by a certified arborist justifying the removal. Removal of any tree is permitted by any person when there is an actual or ongoing emergency condition threatening life or property, the immediate removal of a tree is necessary for the protection and preservation of life or property and there is no time to wait for granting of a tree removal permit. Within three business days of removal, documented evidence such as photographs, along with a completed tree removal application, must be submitted to the Village Manager or the Village

Manager's designee setting forth the nature and extent of the immediate threat. Failure to submit the required documentation within three business days is a violation of this chapter.

- K. Certificate of occupancy. If a permit to remove a tree is issued in connection with construction that requires a building permit, the Building Inspector may not issue a certificate of occupancy until all tree planting and associated restoration work is completed to the satisfaction of the Building Inspector.**

Article V - Enforcement

§ 318-9 Enforcement; penalties for offense.

- A. The Building Inspector will enforce this chapter in the same manner as the Building Inspector enforces the Uniform Code under § 126-15.**
- B. Any property owner removing a tree without a permit or otherwise violating any provision of this chapter is guilty of a violation and is subject to a fine of not less than \$1,050 or more than \$5,000 for the removal of one or two trees and not less than \$1,500 or more than \$7,500 for each additional tree removed.**
- C Any person violating any provision of this chapter other than the provision prohibiting the removal of a tree without a permit is guilty of a violation and is subject to a fine of not more than \$250.**
- D. The Village Clerk-Treasurer will hold any fine recovered under this section in a Tree Preservation Fund, to be used solely for the purpose of preserving trees, minimizing damage to and removal of trees and increasing the tree canopy of the Village of Mamaroneck.**
- E. In addition to any fine which may be imposed under this section, any property owner removing a tree without a permit must replace the tree in accordance with § 318-8.**
- F. Immediately upon the issuance of a notice of violation of any provision of this chapter, work under any building permit, demolition permit, or excavation permit previously issued to the alleged violator is suspended, and no building permit, demolition permit, excavation permit or certificate of occupancy, may be issued with respect to the property, until the notice of violation is withdrawn, dismissed or adjudicated.**

Section 3.

Section 342-16(B) of the Code of the Village of Mamaroneck is amended by adding subsection (6), as follows:

- (6) To preserve the existing trees on the property and to require that, wherever possible, trees that are removed are replaced.**

Section 4.

Section 342-16(C) of the Code of the Village of Mamaroneck is amended by adding subsection (4), as follows:

- (4) Trees that do not have to be removed to facilitate the permissible development of the property may not be removed. Trees that are removed must be replaced in accordance with the requirements of chapter 318 of this Code.**

Section 5.

Section 342-75(D) of the Code of the Village of Mamaroneck is amended as follows:

- D. Any amendment of a previously approved site development plan **or the tree preservation plan associated with that site development plan.**

Section 6.

Section 342-76(B) of the Code of the Village of Mamaroneck is amended as follows:

Landscape. The landscape ~~shall~~ **must** be preserved in its natural state, ~~insofar as practicable and environmentally desirable, by minimizing tree and soil removal. If development of the site necessitates the removal of established trees, special attention shall be given to the planting of replacements or to other landscape treatment.~~ Any grade changes ~~shall~~ **must** be **consistent with** ~~in keeping with the general appearance of the general appearance of~~ neighboring developed areas. **Trees that do not have to be removed to facilitate the permissible development of the property may not be removed. Trees that are removed must be replaced in accordance with the requirements of chapter 318 of this Code.**

Section 7.

Section 342-79 of the Code of the Village of Mamaroneck is amended as follows:

§ 342-79. Planning Board action.

The Planning Board ~~shall~~ **must** review the site development plan and act on the application within 62 days from and after the time of submission of the complete application. **As early as reasonably possible in the review process, the Planning Board may, at its discretion, refer the applicant's tree preservation plan to the Tree Committee for review and comment.** The Board ~~shall~~ **must** comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board. In reviewing the site development plan, the Planning Board ~~shall~~ **must** take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular and ~~shall~~ **must** set any appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter and according to the general criteria and standards defined in § 342-76.

Section 8.

Section A347-1 of the Code of the Village of Mamaroneck is amended by adding the following fee:

Chapter 318, Trees.

Application for a permit to remove a tree on private property. \$25.

Section 9.

Section A348-11 of the Code of the Village of Mamaroneck is amended by adding subsection I, as follows:

- I. **The subdivision must be designed in a manner that avoids the removal of trees that do not have to be removed to facilitate the permissible development of the property.**

Section 10.

Section A348-12 of the Code of the Village of Mamaroneck is amended by adding subsection C, as follows:

- C. The preliminary plat must be accompanied by a tree preservation plan consistent with the requirements of this chapter. The Planning Board must include in the resolution approving the final plat a condition requiring compliance with the approved tree preservation plan before a certificate of occupancy may be granted.**

Section 11.

If any section, subsection, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

Section 12.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede the provisions of the Village Law to the extent that they are inconsistent with this local law.

Section 13.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.