



Town of West Seneca

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MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: May 26, 2021

Subject: Local Law No. 2021- 4
Public Hearing

I hereby request a public hearing be held on June 28, 2021 before this Board to repeal Chapter 110 of the Town of West Seneca Code and replace it with a new proposed Chapter 110. This proposed local law is the Town's revised Tree Ordinance. I have attached a copy of the proposed law hereto, which will be the subject of the public hearing on June 28th.

**TOWN OF WEST SENECA
LOCAL LAW NO. _____ OF THE YEAR 2021**

A Local Law of the Town of West Seneca

Be it enacted by the Town Board of the Town of West Seneca,

Chapter 110 Tree Conservation

§ 110-1 Legislative intent.

- A. The Town of West Seneca recognizes the value of trees to the community and that the preservation and enhancement of these resources is necessary to:
- (1) Protect and promote the public health, safety and general welfare by requiring the preservation and protection of trees on public and private property within the Town;
 - (2) Reduce flooding; reduce water pollution; reduce effects of wind and air turbulence; reduce visual pollution; reduce sound pollution; reduce soil erosion; reduce levels of carbon dioxide and return oxygen to atmosphere; increase groundwater supply; provide shade; provide habitat for wildlife; conserve and protect property values and otherwise facilitate the creation of a convenient, attractive and harmonious community; and generally preserve and safeguard the ecological, economic and aesthetic environment.
- B. It is the purpose of this chapter to regulate the removal of multiple trees and the planting of new trees, maintain tree diversity, preserve existing trees and control harvesting of these natural resources while preserving opportunities for business development. This chapter sets forth regulations for:
- (1) Tree removal(s) associated with site plan, subdivision and special permit applications before the Town;
 - (2) Establishing restrictions for the removal of trees not associated with applications for site plans, subdivisions or special permits; and
 - (3) Regulating certain activities associated with the harvesting of trees.
- C. Certain actions regulated under this chapter may be of sufficient scale to necessitate approval of the Town and may result in significant environmental impacts subject to review pursuant to the State Environmental Quality Review Act.
- D. All land uses subject to the jurisdiction of other codes of the Town of West Seneca, in addition to meeting the requirement of such codes, must also comply with the regulations herein established.

§ 110-2 Definitions.

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

ARBORIST

A certified or otherwise qualified arborist approved by the Environmental Commission.

CLEAR-CUTTING

The large-scale, indiscriminate removal of trees, shrubs and undergrowth with the intention of preparing real property for nonagricultural development purposes.

CODE ENFORCEMENT OFFICER

The officer designated by the Town and charged with enforcement of zoning, building and fire prevention codes.

CRITICAL ROOT ZONE (CRZ)

A practical limit beyond which any loss of roots would not have a significant impact on a tree's survival. The CRZ is a circle whose radius shall be equal to the measured diameter of the tree, in inches, at 4 1/2 feet above the base of the tree, multiplied by 12 inches. The center of this circle shall be the center of the tree.

DIAMETER AT BREAST HEIGHT (DBH)

A standard measurement of the diameter of a tree measured at 4 1/2 feet above the base of the tree. For purposes of this definition, multi-stem trees are considered one individual tree, and each stem must be measured at 4 1/2 feet above the base of each stem and added together to determine the diameter of the multi-stem tree.

DWELLING

A house, apartment, or other place of residence.

ENVIRONMENTAL COMMISSION

The Town of West Seneca Commission for the Conservation of the Environment, as appointed by the Town of West Seneca Town Board.

PARK TREES

All trees located in Town parks and all other areas owned by the Town.

PLAN

The Tree Conservation and Landscape Plan, which shall be drawn to scale, including dimensions and distances, and shall clearly delineate the existing and proposed structures, uses, parking areas, access aisles, drainage patterns and the location, size and description of all landscape materials, existing and proposed, including those existing plant materials to be removed.

PROPERTY

A dwelling.

STREET TREES

All trees, shrubs, bushes and all woody vegetation on land located between property lines on either side of all public streets, highways or rights-of-way within the Town.

TREES

Any living woody plant usually having one or more self-supported stems or trunks and numerous branches that have a DBH of four inches or more.

§ 110-3 General provisions.

- A. All developments otherwise subject to subdivision and/or site plan review shall meet the requirements of this chapter. Where required by this chapter, a tree conservation and landscape plan shall be submitted and approved by the Planning Board as a part of the review procedures for all projects. The Commission and Arborist, if necessary, shall be consulted in an advisory capacity for comments regarding the plan. The Commission may promulgate and adopt its own policies with respect to credentials of the Arborist and the variety of allowable trees to be used.
- B. The plan shall be drawn to scale, including dimensions and distances, and shall clearly delineate the existing and proposed structures, uses, parking areas, access aisles, drainage patterns and the location, size and description of all landscape materials, existing and proposed, including those existing plant materials to be removed.
- C. Upon approval of the plan by the Planning Board, the Code Enforcement Officer shall issue a tree removal permit, and the property owner shall agree to install and perpetually maintain the approved plan for the duration of the use. Any failure to adhere to the standards of the approved plan shall be enforced by the Code Enforcement Officer in accordance with the terms of this chapter.

§ 110-4 Regulated activities; approval required.

It shall be unlawful to conduct, directly or indirectly, any of the following activities in the Town unless a tree conservation and landscape plan is submitted and approval obtained pursuant to this chapter:

- A. The extent of clearing for new-build single-family home sites shall not exceed an area of more than 1/4 acre, not including the area used for driveways, unless stricter requirements have been imposed pursuant to subdivision approval;
- B. The removal of over 10 trees per approved building lot within a regulated setback area unless prior approval is granted during subdivision approval;
- C. Clearing and clear-cutting, as defined herein; or
- D. Removal of any street or park trees.

§ 110-5 Tree removal permit required.

- A. Subject to the exceptions of § 110-6, it shall be unlawful for any person to cut down, kill or otherwise destroy any tree growing on privately owned land within the Town without a tree removal permit issued by the Code Enforcement Officer.
- B. It shall be unlawful to cut down, kill or otherwise destroy any street or park tree without permission of the Superintendent of Buildings and Grounds or a Town Board designee.

§ 110-6 Exceptions.

The requirement of a permit in § 110-5 shall not apply to the following activities:

- A. Cutting down, killing or otherwise destroying trees by the owner, or its agent, of any tract of land no larger than one acre, which has already been improved by a dwelling. This exception shall not apply to parcels which are not yet improved by a dwelling. In the event that a tract of land is being used for residential purposes and is larger than one acre, this exception shall only apply to a one-acre area immediately surrounding and measured equally around the dwelling.
- 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.
- C. Removal of dead dying, dangerous, diseased, or which are so damaged as to be a hazard to life or property of others.
- D. Cutting down, killing or otherwise destroying trees on properties while being operated and maintained as farms, nurseries, orchards or commercial forests. This exception shall not permit lumber harvesting or any form of tree removal incidental to or in preparation for development of the land.
- E. Cutting down, killing or otherwise destroying trees by public utility, natural gas companies or the Town performing normal construction and maintenance pursuant to and in compliance with the law; provided, however, that the Town may review the procedures employed by such companies or departments to determine whether they comply with applicable laws and meet the purposes of this chapter.

§ 110-7 Standards for plan approval and issuance of permit; appeals.

- A. When issuing a permit or reviewing a submitted plan for approval, the following factors will be considered:
 - (1) The extent to which the actual or intended use of the property in accordance with the regulations of the zoning district in which the property lies requires cutting down, killing or destroying trees, following approval of a tree preservation plan and development/site plan.
 - (2) Any unreasonable hardship to the applicant which will result from modification or denial of the requested permit.

- (3) The value of preserving any tree by reason of its location, size, age or some other outstanding quality such as uniqueness, rarity or status as a landmark or species specimen, but not limited thereto.
 - (4) The extent to which the area would be subject to increased water runoff and other environmental degradation due to removal of the tree(s).
 - (5) The heightened environmental value of preserving tree cover in densely developed or densely populated areas.
 - (6) The need for visual screening in transitional zones or relief from glare, commercial or industrial unsightliness or any other affront to the visual sense in any part of the Town.
 - (7) The condition of the tree(s) with respect to disease and potential for creating hazardous conditions.
 - (8) The proximity of the tree(s) to existing or proposed structures and utility appurtenances.
 - (9) The environmental effect of the removal, destruction or killing of the tree(s).
 - (10) The intention of the applicant to replant additional trees at the site.
 - (11) Noncorrectable damage or obstruction to sewer services.
 - (12) Disturbance of the critical root zone.
- B. The Code Enforcement Officer shall, within 30 days from the date a permit application is submitted to the Town, approve or disapprove the application.
- C. Any applicant aggrieved by a decision of the Code Enforcement Officer may, within 30 days of the date on which the decision was mailed to the applicant, appeal such decision to the Town Board. The appeal shall be in writing and shall include a copy of all papers filed with the Code Enforcement Officer and a copy of the decision of the Code Enforcement Officer. The appeal shall be filed when it is received by the Town Clerk. The Town Board shall act upon such appeal within 30 days after such notice of appeal is filed with the Town Clerk. In the event that the Town Board fails to act with respect to such appeal within 30 days after the appeal is filed with the Town Clerk, the application shall be deemed approved, and the applicant shall be entitled to the issuance of the permit required hereunder in accordance with the application.

§ 110-8 Tree care and preservation.

The Superintendent of Buildings and Grounds or the Town Board designee shall have the right to prune, treat, maintain and preserve any park trees as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of parks.

§ 110-9 Pruning; corner clearance.

- A. Every owner of any tree overhanging any street or right-of-way within the Town shall prune the branches of said tree so that such branches shall not obstruct the view of any street intersection and

so that there shall be a clear space of 13 feet above the street and eight feet above the sidewalk. Said owners, upon notice by the Town, shall remove all dead, diseased or dangerous trees or broken or decayed limbs which constitute a danger and menace to the safety of the public.

- B. The Highway Superintendent shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign.

§ 110-10 Tree removal on public property.

It shall be unlawful for any person or firm, except as set forth in this chapter, to cut down or to top any street tree, park tree or other tree, shrubs, bushes and woody vegetation on public property. Trees severely damaged by storms, or other causes, or trees under utility wires or other obstructions where other pruning practices are impractical may be topped by the order of the Highway Superintendent.

§ 110-11 Removal of dead or diseased trees on private property.

Private property owners have the duty, at their own expense, to prune or remove any trees upon their property which are dead, dying, dangerous, diseased, or which are so damaged as to be a hazard to life or property of others. The Highway Superintendent shall have the right to cause the pruning or removal of any dead, dying, dangerous, diseased, or damaged trees on private property within the Town when such trees constitute a hazard to life or property or harbor insects or disease which constitutes a potential threat to other trees within the Town on private property. A private property owner may request the Highway Superintendent exercise the right to cause the pruning or removal of trees by making such request in writing to the Highway Superintendent and providing proof that the property owner has made an effort to resolve the matter with their neighboring property owner first. The private property owner must provide both the Town and neighboring property owner with an Arborist report determining the tree is dead, dying, dangerous, diseased, or so damaged as to be a hazard to life or property of others. Upon receipt of the Arborist report, the Highway Superintendent will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Highway Superintendent shall have the authority to prune or remove such trees and charge the cost of removal on the owner's property tax notice. Where the Town is required to remove a tree for waterway maintenance purposes, the cost shall not be charged to the owner of the property.

§ 110-12 Interference with Highway Superintendent prohibited.

It shall be unlawful for any person to prevent, delay, obstruct or interfere with the Highway Superintendent, or any of his agents or employees, while engaging in the maintenance or removal of any street trees, park trees or trees on private property, as authorized in this chapter.

§ 110-13 Replacement of trees.

- A. When street or park trees are removed by the authority of the Highway Superintendent, Superintendent of Building Grounds or Town Board designee or by other Town officials, said trees should be replaced by the Town either:

- (1) By planting a new tree in the same location of suitable species for planting in an urban environment;
or

(2) Offering the adjacent property owner a replacement tree to be planted on his/her property of a suitable species for an urban environment.

B. Unless otherwise exempt under chapter, where a building permit or site/subdivision plan is required and where more than three trees are to be removed, the applicant must make reasonable provisions for new trees to be planted on site or off site as a mitigation measure. Such new plantings shall be subject to approval by the Code Enforcement Officer or the Planning Board, as applicable. A permanent certificate of occupancy shall not be issued until the plantings are made.

C. If any trees are unlawfully cut down, cleared, killed, girdled or otherwise destroyed by any person(s), firm(s), association(s) or corporation(s) in connection with, or preparatory to, any development, improvement or change of use or proposed rezoning for which a permit or permission is required by the Town, then, in addition to any other fine or penalty provided for in this chapter, or elsewhere, said person(s), firm(s), association(s) or corporation(s) shall not be granted such permit or permission by the Town unless and until a remedial tree planting plan for the subject premises is accepted and approved by the Planning Board as part of the coordinated review process.

D. The Environmental Commission and Arborist shall provide an advisory list of trees to be planted in accordance with this section.

§ 110-14 Dutch elm disease.

Pursuant to the provisions of § 169 of the New York State Agriculture and Markets Law, the Town Board of the Town of West Seneca elects to exercise and enjoy, through its appropriate officers and employees, the powers and immunities prescribed and granted in §§ 164, 165 and 167 of Article 14 of the Agriculture and Markets Law with respect and in regard to the Dutch elm disease within the limits of said Town.

§ 110-15 Penalties for offenses.

A. The Zoning Code Enforcement Officer may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, or has failed to undertake the project in the manner set forth by the permit.

B. Any person who violates any provision of this Chapter shall be, upon conviction or a plea of guilty, subject to a fine of not more than \$250 or imprisonment not to exceed fifteen (15) days, or both. The removal of each tree shall constitute a separate offense. For a second and each subsequent offense within a one-year period, the violator shall be guilty of a violation punishable by a fine of not more than \$500 or imprisonment not to exceed fifteen (15) days, or both. . In addition to the aforementioned penalties, the court may impose a civil penalty for the removal or destruction of any tree on private property, street, or park tree equal to its value, not to exceed two thousand five hundred dollars (\$2,500.00) per tree.

C. If any trees are unlawfully cut down, cleared, killed or otherwise destroyed by any person(s), firm(s), association(s), or corporation(s) in connection with or preparatory to any development, improvement, or change of use or proposed rezoning, for which a permit or permission is required by the Town, then, in addition to any other fine or penalty provided for in this Chapter or elsewhere, said

person(s), firm(s), association(s), or corporation(s) shall not be granted such permit or permission by the Town unless and until a remedial tree planting plan for the subject premises is accepted and approved by the Town Environmental Commission and Planning Board as part of the coordinated review process.

- C. In addition to the penalties outlined above, the Town shall not issue a building permit or temporary certificate of occupancy for any property for which a violation of this chapter has been served until said violation is dismissed or resolved to the satisfaction of the Town or court, as appropriate.
- D. The Town Zoning Code Enforcement Officers are hereby authorized to issue appearance tickets and summonses for violation of this chapter.
- E. This chapter shall be administered as specified herein and enforced by the Code Enforcement Officer or other Town Board designee of the Town of West Seneca.

§ 110-16 Severability.

If any clause, sentence, paragraph or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 110-17 When effective.

This chapter shall take effect upon filing with the Secretary of State.