

Chapter 90

LANDSCAPE GARDENING CONTROL

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[HISTORY: Adopted by the Board of Trustees of the Village of Kensington 4-30-2003 by L.L. No. 5-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Brush, grass, weeds and firewood storage — See Ch. 61.

Fences and walls — See Ch. 77.

Trees — See Ch. 141.

§ 90-1. Title.

This chapter and all of its provisions shall be known and may be cited as the "Landscape Gardening Control Law of the Village of Kensington."

§ 90-2. Scope and purpose.

It is the finding of the Board of Trustees that the provisions of this chapter are necessary and desirable to regulate and control commercial landscape gardening activities which pose a

potential or actual risk of noise, odors, or other nuisances or which might otherwise impair or disturb the public health, safety, peace, welfare, and good order of the community. The purpose of this chapter is to register certain persons engaged routinely in commercial landscape gardening and to limit, regulate, or prohibit related activities which, if left unregulated, may tend to create or encourage nuisances, noise, or other environmental pollution or disturbance of the public peace and order.

§ 90-3. Definitions.

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

BOARD — The Board of Trustees of the Village.

COMMERCIAL LANDSCAPING — The business or trade of rendering any landscaping, gardening, or groundskeeping services, as defined herein, either as principal, independent contractor, or through an agent or employee, for a fee, charge, or other compensation, to or for the benefit of any owner, tenant, or occupant of lands, grounds, or buildings.

GARDENING — The tilling, sowing, cultivating, trimming, fertilizing, pruning, cutting, shaping, treating, spraying, or otherwise maintaining and/or providing care for any lawn, sod, tree, flower, shrub, bush, plant, or other flora on any lot, plot, or parcel of land.

GROUNDSKEEPING — The cleaning of any lot, plot, or parcel of land by means of gathering and/or removing weeds or any fallen, diseased, dead, or discarded tree limbs, branches, brush, leaves, grass, or lawn clippings, fruit or flower waste, or other plant waste and any, litter, dirt, debris, rubbish, or other refuse or waste present or engendered on or about the premises. Groundskeeping does not include:

- A. The removal of litter, dirt, debris, rubbish, or other refuse or waste by a sanitation department. [Amended 1-21-2004 by L.L. No. 1-2004]
- B. The removal of litter, dirt, debris, rubbish, or other refuse or waste by a commercial refuse carter which is not performing any other commercial landscaping services to or for the benefit of the owner, tenant, or occupant of the lands, grounds, or buildings from which the removal is taking place.

LANDSCAPER — An individual, firm, corporation, or other entity which performs commercial landscaping services.

LANDSCAPING — The planting, transplanting, arranging, placing, and/or removal of any lawns, sod, frees, flowers, shrubs, bushes, plants, or other flora on any lot, plot, or parcel of land for a planned design or purpose or to achieve some aesthetic effect.

VILLAGE — The Village of Kensington.

§ 90-4. Registration required; exceptions.

- A. It shall be unlawful for any person to engage in or practice the trade or business of commercial landscaping within the Village without having first registered with the Village pursuant to the requirements of this chapter.
- B. Commercial landscaping may be performed without registering with the Village by:
 - (1) The owner, lessee, or occupant of the property on which the work is being performed.
 - (2) An employee of the owner, lessee, or occupant of the property on which the work is being performed, provided that such employee does not provide commercial landscaping for other properties within the Village within any one calendar year, and such employee has no employees of his or her own who

are performing commercial landscaping within the Village. The term "employee" as used herein is limited to persons who are treated by the owner, lessee, or occupant as an employee pursuant to all New York State and federal labor and income tax laws. [Amended 1-21-2004 by L.L. No. 1-2004]

- (3) A person who is less than 21 years of age and who is performing the commercial landscaping for his or her own account and not as an employee of another person or entity. Such person has no employees of his or her own who are performing commercial landscaping within the Village. [Amended 1-21-2004 by L.L. No. 1-2004]

§ 90-5. Application procedure; fee; expiration; decals.

- A. Any landscaper desiring to register as required by this chapter shall make application on forms to be furnished by the Village Clerk.
- B. Each applicant for registration shall pay a fee of \$25 as a nonrefundable filing fee with the application.
- C. All registrations pursuant to this chapter shall expire on the last day of December in the year in which they have been issued. Registration may be renewed upon the filing of a renewal application and a payment of an annual fee of \$25.
- D. Persons registered pursuant to this chapter shall, at all times, keep a copy of such registration on his person and/or at the site at which such person is rendering any commercial landscaping and shall immediately produce such copy for inspection by any person lawfully requesting the production of the same, including but not limited to any peace or police officer and any inspector, official, officer, or employee of the Village or other government agency or authority.

- E. The Village shall provide a permit to be placed in the front window or dashboard of every truck, dump truck, van, or other motor vehicle owned, leased, or otherwise used by any person engaged in commercial landscaping at all times when such vehicle is located within the Village in the course of providing commercial landscaping services. [Amended 1-21-2004 by L.L. No. 1-2004]

§ 90-6. Regulations.

- A. No landscaper or other person shall individually, or cause or permit any other person who is providing commercial landscaping services for them or who is otherwise within their employ or control to:
- (1) Blow, rake, place, spill, dump or otherwise deposit any leaves, grass, garbage, refuse, cutting, wood, oil, pesticides, or other materials or debris from one property onto any public property, including but not limited to streets, sidewalks and rights-of-way, or the private property of another person, without such other person's permission. In any prosecution for a violation of this provision, it shall be an affirmative defense that such other person gave the alleged offender permission to blow, rake, place, spill, dump or otherwise deposit such material or debris on such other person's property.
 - (2) Remove leaves, clippings, or other yard waste in a truck, dump truck, van, or other motor vehicle, trailer, container, or other towable device without securing a tarpaulin or other cover to prevent spillage.
 - (3) Spill or dump any oil, gasoline, or other petroleum products within the Village.
 - (4) Fill or refill any machinery or equipment with any fuel or lubricant except over a drop cloth or other

device designed to catch and retain any accidental spillage.

- (5) Remove, destroy, or alter the habitat of any tree in violation of Chapter 141, Trees.
 - (6) Spray trees, plants, or other foliage or otherwise apply pesticides or fertilizers on a Saturday, Sunday, or public holiday.
 - (7) Perform any commercial landscaping on Sundays, or before 8:00 a.m. on weekdays and 10:00 a.m. on Saturdays, and no later than 6:00 p.m. on all days. [Amended 1-21-2004 by L.L. No. 1-2004]
 - (8) Use gas-powered leaf blowers during June 1 through September 30. [Amended 1-21-2004 by L.L. No. 1-2004¹]
 - (9) Operate any equipment which emits noise which to a reasonable person of normal sensitivities would be deemed unusually loud to the extent of impairing his or her reasonable use of his or her property, nor otherwise violate Chapter 97, Noise.
 - (10) Operate any equipment which emits excessive fumes.
 - (11) Burn any wastepaper, rubbish, leaves, cuttings, wood, or other waste materials.
 - (12) Apply or spray pesticides or fertilizers that have not been approved as to type, quantity, and manner of application by the appropriate federal, state, and/or local agencies.
- B. All commercial landscaping shall be performed in accordance with the laws, ordinances, rules, and

¹ Editor's Note: Editor's Note: This local law also repealed former Subsection A(8), which prohibited the use of gardening equipment powered by an internal-combustion engine during certain hours. Said local law also redesignated former Subsection A(9) through (13) as Subsection A(8) through (12), respectively.

regulations of the United States, the State of New York, the County of Nassau, and the Village.

§ 90-7. Suspension or revocation of registration.

- A. Whenever it shall appear, to the satisfaction of the Village Clerk, that there has been any false statement or any misrepresentation as to a material fact in the application on which the registration was based, or that any registration has been issued in error, or that there has been a material failure to comply with any statute, ordinance, rule, or regulation, or with any condition upon which the registration was granted, or that the further use of the registration or the exercise of the privilege thereunder could cause or tend to cause injury, damage, or unreasonable annoyance to a reasonable person of normal sensitivities, or to property within the Village, the Village Clerk may, upon not less than five days' notice by certified mail, return receipt requested, suspend such registration for a period not to exceed 30 days, without refunding any portion of the registration fee, but shall report the facts and circumstances to the Board at its next regular meeting.
- B. Thereupon, the Code Enforcement Officer may, in its discretion, forthwith and upon not less than five days' notice by certified mail, return receipt requested, revoke said registration or continue the suspension of such registration for such period of time as the Board may determine. [Amended 1-21-2004 by L.L. No. 1-2004]
- C. The Board may require the registrant to appear before the Board and show cause why the registration should not be permanently revoked, and the failure of the registrant to appear at the time and place appointed shall, without more, be deemed adequate grounds for the permanent revocation of the registration.
- D. The registrant shall have the right, upon application, to appear and be heard before the Board and present such

proof as he or she may deem appropriate in respect to any such matter as to why such registration should not be suspended or revoked.

§ 90-8. Penalties for offenses.

Every person convicted of a violation of this chapter shall for a first conviction thereof be punished by a fine of not more than \$250; for a conviction of a second violation, both of which were committed within a period of 24 months, such person shall be punished by a fine of not more than \$500; upon a conviction of a third or subsequent violation, all of which were committed within a period of 24 months, such person shall be punished by a fine of not more than \$1,000. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.