

Chapter 141

TREES

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ARTICLE II Removal of Dead Trees on Private Property

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[HISTORY: Adopted by the Board of Trustees of the Village of Kensington as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Landscape gardening control — See Ch. 90.
Peace and good order — See Ch. 108.

ARTICLE I
Preservation and Protection
[Adopted 10-21-1987 by L.L. No. 4-1987]

§ 141-1. Intent and purpose.

The intent of this article is to preserve and protect trees, and by so doing, aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and the costs associated therewith and replenish groundwater supplies; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading, provide a haven for birds which in turn assist in the control of insects; protect and increase property values; conserve and enhance the physical and aesthetic environment of the Village of Kensington; and generally protect and enhance the quality of life and the general welfare of the Village. The Board of Trustees of the Village hereby finds that such purposes are consistent with and vital to the general health, safety and welfare of the Village of Kensington and its inhabitants.

§ 141-2. Definitions.

As used in this article, the following terms or phrases have the indicated meanings, unless the context clearly indicates otherwise:

APPLICANT — The owner of real property or the duly authorized agent of such an owner.

CALIPER — The diameter of any tree trunk six inches above ground level.

DIAMETER BREAST HIGH — The diameter at a height of four feet six inches above the base of the trunk.

HABIT — The natural growing characteristics of any tree, and includes branch spread and distribution, branch heights above ground and root spread and distribution.

PERSON — Any individual, firm, partnership, association, corporation, company, public agency, public utility or organization of any kind, or agent thereof, but not including the Village of Kensington.

REAL PROPERTY — All improved or unimproved real property, whether or not subject to subdivision and development.

REMOVAL — The actual removal, or causing the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death, of a tree.

SUBSTANTIAL ALTERATION — Any cutting, pruning, elevating or other alteration of the habit of a tree which impairs or endangers the life of such tree or destroys its natural symmetry; and includes but is not limited to heavy or unnecessary cutting of top branches (topping), cutting of major lower limbs (sever elevating) and drastic pruning, but shall not include customarily accepted or ornamental procedures.

TREE — Any living woody plant, its root system and the environment within the area defined by the outermost limits of its branches, which is at least six inches' diameter breast high; or a flowering ornamental which is at least six inches' diameter breast high; or any living woody plant which is unique by reason of age, size, rarity or status as a landmark or species specimen or other outstanding quality. **[Amended 4-16-2014 by L.L. No. 1-2014]**

TREE WORTHY OF PRESERVATION — Any tree which can reasonably be determined by the Village official to have a remaining life-span equal to or greater than that of a proposed structure included in a site plan or subdivision plat.

VILLAGE — The Village of Kensington.

VILLAGE OFFICIAL — The Village Engineer, Village Building Inspector, Village Superintendent of Public Works or such other person designated by the Mayor with the approval of the Board of Trustees.

§ 141-3. Prohibitions.

- A. It shall be unlawful for any person to remove, destroy or substantially alter the habit of one or more of the trees on any parcel of real property unless a permit has been obtained pursuant to this article.
- B. Nothing in this section shall be construed to prohibit the alteration of habit of any tree made in accordance with customarily accepted ornamental procedures.
- C. The prohibition of this section shall not be applicable to an emergency situation nor to the removal, destruction or substantial alteration of any tree made in accordance with an accepted landscape plan included in any part of a building permit or site plan hereafter approved pursuant to any applicable law.

§ 141-4. Permits for removal; applications.

- A. Any person desiring a permit to remove a tree, as required by this article, shall submit a written application to the Village official. The application shall include the following information:
 - (1) Name and address of applicant and status of legal entity.
 - (2) Status of applicant with respect to the land.
 - (3) Written consent of the owner of the land if applicant is not the owner.

- (4) Name of person preparing any map, drawing or diagram submitted with application.
 - (5) Location of the property, including a street number and address and lot numbers as shown on the Nassau County Land and Tax Map.
 - (6) Diagram of the parcel of land specifically designating the area or areas of proposed tree removal and the proposed use of such area.
 - (7) Location of all proposed structures and driveways on the site.
 - (8) Location of all trees and identification of size and species.
 - (9) Designation of all diseased or damaged trees.
 - (10) Designation of any trees endangering any roadway, pavement or utility line.
 - (11) Any proposed grade changes that might adversely affect or endanger any trees on the site and specifications of how to maintain them.
 - (12) Designation of trees to be removed and trees to be maintained.
 - (13) Purpose of tree removal (construction, street or roadway, driveway, recreation area, patio, parking lot, etc.).
 - (14) All materials to be planted, with an indication of size, species and methods of planting.
- B. The Village official may, in addition, require the applicant to supply any of the following documentation:
- (1) A site plan specifying the methods to be used to preserve all remaining trees and their root systems and the means of providing water and nutrients to their root systems.

- (2) A topographical survey of the land if development or construction will result in change in elevation of more than five feet or if the parcel of land is more than one acre in area.
- C. Upon receipt of the application, the Village official shall visit and inspect the site and contiguous and adjoining lands. If the official determines that the plan will destroy no more trees than are reasonably necessary to achieve the proposed development, the permit application shall be approved. If the official determines that the plan will destroy more trees than are reasonably necessary to achieve the proposed development, the application will be denied.
- D. In determining whether or not a permit should be granted, the official shall consider the following:
- (1) The condition of the tree or trees with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utility services.
 - (2) The necessity of removing the tree or trees in order to construct the proposed improvements to allow reasonable economic use of the property.
 - (3) The effect of the removal on erosion, soil moisture retention and flow of surface waters.
 - (4) The number and density of trees in the area and the effect of tree removal on property values of the neighborhood and upon other existing vegetation.
 - (5) Whether any tree in question is a tree worthy of preservation.
 - (6) The impact upon the urban and natural environment, including:

- (a) Whether tree removal would substantially alter the water table or affect the stabilization of ground-and surface water.
 - (b) Whether tree removal would affect water quality and aquifer recharge by reducing the natural assimilation of nutrients, chemical pollutants, heavy metals and other substances from ground- and surface waters during the movement of water towards an aquifer or natural stream.
 - (c) Whether tree removal would have an adverse impact upon existing biological and ecological streams.
 - (d) Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of any applicable noise control law will occur.
 - (e) Whether tree removal will affect air movement by significantly reducing the ability of existing vegetation to reduce wind velocities.
 - (f) Whether tree removal will affect air quality by significantly affecting the natural cleansing of the atmosphere by vegetation.
 - (g) Whether tree removal will affect wildlife habitat by significantly reducing the habitat available for wildlife existence and reproduction or causing the emigration of wildlife from adjacent or associated ecosystems.
- (7) The ease with which the applicant can alter or revise the proposed development or improvement to accommodate existing trees.
- (8) The economic hardship that would be imposed upon the applicant were the permit denied.

- (9) The heightened desirability of preserving tree cover in densely developed or densely populated areas.
- (10) The need for visual screening in transitional zones or relief from glare, blight, commercial or industrial ugliness or any other visual affront.
- (11) Whether the continued presence of the tree or trees is likely to cause danger to a person or property.
- (12) Whether the topography of the area in which the tree is located is of such a nature as to be damaging or injurious to trees.
- (13) Whether the removal of the trees is for the purpose of thinning a heavily wooded area where some trees will remain.

§ 141-5. Replacement of trees.

The Village official may require the planting of the same or agreed upon alternate species of trees as are as nearly comparable in type and size as practical to the trees to be removed, when the individual character of the tree(s) or the ecological setting requires special consideration, as a condition for the issuance of a permit for tree removal. The location for planting of the replacement trees shall be agreed upon between the applicant and the Village official prior to issuance of a permit for removal.

§ 141-6. Appeals.

Any person aggrieved by a determination of the Village official in the exercise of the authority granted by this article shall have the right to appeal, in writing, to the Board of Trustees. Any such appeal shall be taken within 30 days after the determination of the Village official. Such appeal shall state the reasons for the appeal. The determination of the Board of Trustees on said appeal shall be final and conclusive.

§ 141-7. Fees.

- A. Any application subject to the provisions of this article shall be accompanied by an application fee posed on the number of trees involved, ranging from fewer than five to more than 11 and detailed on a schedule in the office of the Village Clerk as established by resolution of the Board of Trustees. **[Amended 3-21-1990 by L.L. No. 3-1990]**
- B. No permit required by this article shall be issued until the applicant has posted bond or cash escrow in an amount to be determined upon the recommendation of the Village official, conditioned upon satisfactory compliance with the terms of the permit.

§ 141-8. Penalties for offenses.

Any person who violates the provisions of this article shall be guilty of an offense and shall be subject to a fine not to exceed \$500 for each tree the habit of which is removed, destroyed or substantially altered in violation of this article. In addition, this article may be enforced by civil action, including an injunction, and any owner of real property who has violated or permitted a violation of this article may be directed by the Village official to replace with new trees (3 1/2 inches to four inches in diameter) any trees removed, destroyed or substantially altered in violation of this article, and where such direction has been made, no building permit or certificate of occupancy shall be issued for structures on said real property until such replacement has been completed.

§ 141-9. Emergencies.

In case of emergencies involving, but not limited to, hurricanes, windstorms, floods, freezes or other natural disasters, the permit requirements of this article may be waived by the Village official.

§ 141-10. Protection of trees.

- A. Every property owner or occupant shall be responsible for the normal care, including watering, of trees, shrubs and plants located on such property.
- B. Willful injury or disfigurement of any tree growing within the Village shall be a violation of this article.
- C. No person shall:
 - (1) Attach any sign, notice or other object to any tree or fasten any wires, cables, nails or screws to any tree in a manner that could prove harmful to the tree, except as necessary in conjunction with activities in the public interest.
 - (2) Pour any material on any tree or on nearby ground which could be harmful to the tree.
 - (3) Cause or encourage any unnecessary fire or burning near or around any tree.
 - (4) Construct a concrete, asphalt, brick or gravel sidewalk or otherwise fill up the ground around any tree so as to cut off air, light or water from the roots.
 - (5) Pile building material or equipment around any tree so as to cause injury thereto.
- D. A protective barrier shall be placed around the protected trees prior to land preparation or construction activities and shall remain in place until all construction activity is terminated.
- E. No equipment, chemicals, soil deposits or construction materials shall be placed within the protective barriers.
- F. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

ARTICLE II

**Removal of Dead Trees on Private Property
[Adopted 12-17-2008 by L.L. No. 3-2008¹]****§ 141-11. Unlawful maintenance of dead trees.**

It shall be unlawful for any owner of real property to maintain a dead tree on any plot, parcel or piece of land within the Village.

§ 141-12. Notice.

The Village Clerk shall give notice to the owner of such plot, parcel or piece of land that such condition exists by mailing to such owner a written notice at its last known address. The notice shall inform the owner that within 30 days of receipt of notice that the owner is to remove the entire tree and its stump.

§ 141-13. Failure to comply.

A person upon whom notice has been served to remove a dead tree and stump and who for 30 days shall neglect or fail to comply with the provision of any such notice shall be deemed to have violated this article.

§ 141-14. Penalties for offenses.

Each person who violates any provision of this article shall, for each and every day that said violation continues, be subject to a fine of not more than \$1,000 or imprisonment for a period not to exceed six months, or both such fine and imprisonment.

1. Editor's Note: This local law was originally adopted as Ch. 126 but was renumbered to maintain the organization of the Code.