

Chapter 176: TREE PRESERVATION AND LANDSCAPE MAINTENANCE

[HISTORY: Adopted by the Board of Trustees of the Village of Montebello 1-21-1998 by L.L. No. 1-1998. Amendments noted where applicable.]

§ 176-1. Title.

This chapter shall be known and may be cited as the “Tree Preservation and Landscape Maintenance Law of the Village of Montebello.”

§ 176-2. Legislative intent.

It is the intention of the Village of Montebello to retain the rural appearance of the community. Said rural appearance is a consequence of its existing wooded character and streetscape. Toward that end, the Village Board has implemented these regulations for the following purposes:

- A. To preserve an important attribute of the Village, by encouraging owners of existing developed lands, and developers of lands, to save or replace as many native and mature tree species as possible when making improvements to real property.
- B. To control and regulate indiscriminate and excessive removal, cutting, and destruction of trees in order to regulate and prevent conditions which cause increased surface runoff, soil erosion, and cause decreased soil fertility;
- C. To maintain the stability and value of real estate by preserving existing woodlands and providing for the appropriate aesthetic of the streetscape; and
- D. To ensure the continued maintenance of landscaping in accordance with site plan or subdivision plan approvals, or in accordance with the regulations contained herein.

§ 176-3. Definitions and word usage.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number include the singular and words in the singular include the plural. The word "shall" is always mandatory and never discretionary.

COMPENSATORY PAYMENT — The payment into the Tree Fund, in lieu of a compensatory planting, of a sum determined to be equivalent to the cost of trees to replace those removed as based upon a per inch of caliper or circumference formula. An associated payment schedule is to be established and amended from time to time by resolution of the Village Board. [Added 6-18-2008 by L.L. No. 3-2008]

COMPENSATORY PLANTING — The planting of replacement trees determined to be equivalent to those removed. [Added 6-18-2008 by L.L. No. 3-2008]

DEAD OR IMMINENTLY DEAD TREE — A tree with no sign of life or which is so late in an irreversible disease process or is so severely damaged that it is highly probable that it will be rendered dead within one year. [Added 6-18-2008 by L.L. No. 3-2008]

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind.

PLANNING BOARD — Planning Board of the Village of Montebello.

SECURITY — Security as provided in this chapter shall be in cash.

SHADE TREE — A tree located in the right-of-way or shade tree easement, either previously dedicated or to be dedicated to the Village, except where otherwise indicated.

SHADE TREE EASEMENT — A shade tree easement is a five-foot-wide easement parallel to a road right-of-way granted by the property owner to the Village, that has been established beyond the right-of-way line for the purposes of planting shade trees and for future maintenance of these plantings.

SITE PLAN — As defined in Chapter 195, Zoning, of the Village of Montebello and further in Chapter 146, Site Development Plans.

SUBDIVISION PLAT — As defined in Chapter 163, Subdivision of Land, of the Village of Montebello.

TREE — A woody plant, the branches of which spring from and are supported upon a main trunk, with a caliper of four or more inches at the point of maximum width measured four feet from the ground. [Added 6-22-2005 by L.L. No. 4-2005; amended 6-18-2008 by L.L. No. 3-2008]

TREE FUND — A fund to be established, maintained and utilized as directed by the Village Board, the purpose of which is to plant replacement trees throughout the Village as deemed appropriate with the guidance of the Parks Commission. [Added 6-18-2008 by L.L. No. 3-2008]

TREE REMOVAL CONTRACTOR — An individual, collection of individuals or business entity for hire who or which is engaged in the business of providing services with respect to trees, such as removing, pruning, trimming, planting, stump grinding, cabling, and brush chipping and removal. [Added 6-18-2008 by L.L. No. 3-2008]

VILLAGE — Village of Montebello.

VILLAGE ROAD — A road and/or right-of-way under the jurisdiction of the Village.

VILLAGE ENGINEER — The Village Engineer of the Village of Montebello.

§ 176-4. Shade trees.

A. Planting of trees required. Any person who obtains final subdivision or site plan approval from the Planning Board of the Village of Montebello, County of Rockland, State of New York, shall have shade trees planted upon the property on which such construction is located. Such trees are to be planted within five feet of the right-of-way of the public road(s) or roads abutting said property, this being set aside as a shade tree easement as shown on the approved subdivision plat. One tree shall be planted for every 40 feet of existing or new road frontage of said property unless the Planning Board waived this requirement in whole or in part upon final subdivision approval.

B. Exceptions. The Village Planning Board may grant a shade tree waiver, in whole or in part, only if there are existing trees growing along such right-of-ways or on the abutting property near the street property line which, in the opinion of the Village Planning Board, complies with the intent of this chapter. Waivers may also be granted when a landscaping plan has been approved for the project by the Planning Board.

C. Approval of trees and planting required.

(1) New trees to be provided pursuant to this chapter shall be approved by the Village Engineer, and shall be planted in accordance with specifications, rules and regulations promulgated by the office of the Village Engineer and kept on file at Village Hall.

(2) The cost of furnishing and planting all trees that are required to be planted by the Planning Board must be deposited in the form of a separate security with the Village Clerk-Treasurer. The security shall be established whether the person obtaining subdivision approval constructs the public improvements before filing the

subdivision, or alternatively, provides such additional security for the public improvements in anticipation of filing the subdivision plat.

(3) The amount of the security to be established shall be stipulated in the Village's fee schedule, which schedule is revised and readopted from time to time. The amount is to be calculated by multiplying the linear foot length of the shade tree easement in the subdivision or on the site, by the unit price established in the fee schedule, such price being reflective of the cost of planting shade trees at approximately forty-foot centers.

(4) The security shall be established to ensure the shade tree plantings in accordance with the provisions of this section. The security shall also guarantee that the trees so planted will survive in good condition for two years following their planting. The money so deposited will be held in the same account as money paid in lieu of planting. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

D. Permitted planting period. In order to preserve the new shade tree plantings, tree planting work shall not be permitted to commence until all road and utility construction is complete and the road has been recommended for dedication to the Village by the Village Engineer. Further, certain plantings may not be permitted to be planted at that time, where, in the opinion of the Village Engineer, new construction in or near the road frontage may damage the new plantings. Tree plantings may only be performed during the planting seasons described in the horticultural guidelines referenced in the Village's rules and regulations for the shade tree plantings.

E. Payment in lieu of planting. In lieu of planting shade trees in accordance with this chapter, a person may deposit with the Village Clerk-Treasurer, in cash or by good certified check, the appropriate sum to cover the cost of all plantings, which money shall be held by the Village of Montebello to be used for the sole purpose of planting and maintaining shade trees required by this chapter. After the effective date of this chapter, no roadway shall be accepted for dedication until the Village Engineer shall duly inform the Village that compliance to this chapter, when required, has been fulfilled under the provisions of this chapter either through completion of the planting work, posting of the security, and/or payment in lieu of planting.

F. Requirements for plantings under approved site plan. Any person or persons obtaining a building permit from the Building Inspector of the Village of Montebello and which construction is based on a site plan approved by the Planning Board for the construction of a commercial office, school, church, fraternal, benevolent, industrial, or similar nonresidential building shall plant trees in accordance with the rules, regulations and specifications of the Village, and shall deposit a separate security as stipulated in the Village's fee schedule to ensure the replacement of any tree plantings found to be dead or dying after two growing seasons as per § 176-6, prior to the issuance of a certificate of occupancy. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

G. Return of security. All securities posted with the Village will be returned in the full amount deposited upon application of the persons or their successors who posted such security, upon presentation of certificate of substantial completion and acceptance of the shade trees, as authorized by the Village Engineer. Application for release of said security may be made at the following times.

(1) Release of 50% of security deposit - one calendar year following the last planting.

(2) Release of 75% of security deposit - two calendar years following the last planting.

(3) Release of 100% of security deposit - 30 months following the last planting. If the required shade trees are not furnished and planted within 180 calendar days following the Village's notice to complete the plantings, the Village shall, after proper notice, utilize said security for the installation of the shade trees.

§ 176-5. Maintenance of landscaping in accordance with site and subdivision plans.

A. Maintenance required. The owner and each successive owner of any property which has received site plan or subdivision approval, or any tenant or agent of said property, if any, shall be jointly and severally responsible for the maintenance of all landscaping materials which shall be maintained in good condition so as to present a healthy, neat and orderly appearance, and the perimeter area shall be kept free from refuse and debris. This shall include, but not be limited to, pruning, fertilizing, watering, mowing, weeding, and other such activities necessary to the proper maintenance of the landscaping. Said maintenance shall extend to indi-

vidual lots created by said subdivision of property.

B. Inspections. The Building Inspector, the Village Engineer, or other Village Board designated representative, shall be authorized to inspect periodically all landscaping and screening as approved by the Planning Board as part of site plan or subdivision plan approval, or investigate complaints made by any official or private citizen concerning the maintenance of any such landscape materials.

C. Notice upon failure to maintain landscaping. Where any owner of property to which this article applies fails to reasonably maintain the required trees, landscaping, or screening devices, or maintain the property so as to comply with any requirement of this section, the Village Building Inspector may issue a written notice and order to the owner requiring the owners to replace any dead or dying trees or landscape plant materials that were required as part of site plan or subdivision plan approval; or require any other action otherwise necessary to abate or correct any condition to meet the requirements of this section.

D. Replacement-in-kind. Any plant that dies must be replaced with another living plant that complies with the landscape plan included as part of the site plan or subdivision plan within 90 days after notification by the Village. The plant may be replanted at a later date to be established by the Village Engineer to ensure the landscape material is planted in the appropriate growing season.

§ 176-6. Tree removal; permit; Planning Board review; licensing of contractors; fees.

A. Prohibited activities. Except as permitted herein, no person shall do or cause to be done by others, either purposely, carelessly, or negligently, any of the following acts upon privately owned property within the Village of Montebello:

- (1) Cut, destroy, remove, or substantially injure any tree except as may be permitted in Subsection B, permitted activities, below.
- (2) Place or maintain upon the ground any substance or impervious surface which would impede the free access of air and water to the roots of any tree.
- (3) Apply any substance to any part of a tree, including the roots, with the intent to injure or destroy the tree.

B. Permitted activities. Notwithstanding the restrictions above, the following activities shall be permitted: [Amended 6-22-2005 by L.L. No. 4-2005; 6-18-2008 by L.L. No. 3-2008]

- (1) The cutting, pruning, or trimming of trees in a manner that is not harmful to the health of the tree.
- (2) The cutting, destruction or removal of trees which are dead or imminently dead or which endanger public safety and pose imminent peril, such condition confirmed by the Village Engineer, or his or her designee as chosen by the Village Board of Trustees, with the assistance of an arborist if the Village Engineer or designee believes same necessary to facilitate making an informed decision in the circumstances, in the form of a permit issued after application and after payment of a permit fee set by said Board by resolution, and prior to cutting or removal. Application for this permit shall include a map of the property identifying the location of said tree or trees and supporting evidence (e.g., photographs, report of an arborist) indicating the reason for removal. Any person who cuts, destroys or removes trees for said purpose without first obtaining a permit because he or she believed that public safety was endangered or an imminent peril posed shall submit a written application to the Planning Board made within five days after the cutting, destruction or removal of trees has occurred, except that the period is extended to 20 days if the removal occurs due to an extreme weather condition, such as a hurricane, which is known to have damaged a significant number of trees in the Village. In the case of removal without a permit, independent proof (such as a photograph, police report or arborist's certification) is required in accordance with § 176-6D, Exceptions, in order to obtain approval from the Planning Board excepting said person from the regulations contained herein. The Planning Board may also request the Village Engineer, Village Planner or other Village consultant to assist in evaluating such applications. The fees charged to the Village by all such consultants shall be paid by the applicant. Removal of trees for nonimminent perils shall be governed by § 176-6B(4).

- (3) Upon receipt of a permit after application to the Village Engineer or other designee of the Village Board and payment of a permit fee set by said Board by resolution, Editor's Note: The application form for a tree removal permit is available in the Village offices. the cutting or removal of not more than one tree per

10,000 square feet of lot area during any two-year period but, irrespective of lot area, in no event removal of more than eight trees per lot in any two-year period, or 12 trees in any six-year period, unless said removal is in accordance with a site or subdivision plan duly approved by the Planning Board. [See Subsection B(6), below.] In the latter case, trees shall have been identified on said plans, and no additional trees shall be cut without approval of the Planning Board. For the purpose of this provision, "year" shall be construed to be the calendar year.

(4) The cutting, removal or destruction of a tree as necessary to construct any structure for which a building permit has been issued by the Building Inspector and which does not require subdivision or site plan approval, provided said cutting, removal or destruction is reasonably kept to the minimum required to construct said structure. Any application shall indicate the extent of tree removal on the property. The Building Inspector, upon review of a building permit application which requires extensive tree cutting or removal, shall refer said application to the Planning Board for approval in accordance with Subsection D, Exceptions, below.

"Extensive," for the purposes of this provision, shall be defined as the cutting or removal of more trees than permitted as of right for the subject lot pursuant to Subsection B(3). In the case of such a referral, a compensatory planting or compensatory payment shall be made, as directed by the Planning Board.

(5) The cutting, removal or destruction of any tree pursuant to an order or directive of the Village, the county, or a state agency.

(6) The cutting or removal of trees as shown on an approved site plan or subdivision plan or a plan approved by the Planning Board. [See Subsection B(3), above.]

(7) The necessary cutting, removal or destruction of trees by a utility provider for the purposes of power, cable, telephone, water or sewer service, provided that all utility companies shall notify the Village Clerk of any tree trimming schedule prior to commencing tree trimming operations. Such activities shall not exceed the requirements of serving the needs of the utility as determined by the New York State Public Service Commission (PSC).

C. Excluded activities. The provisions of this chapter shall not apply to activities involving trees within the public rights-of-way or publicly owned properties.

D. Exceptions. Upon written application to the Planning Board, and after payment of a permit fee set by the Board of Trustees by resolution, the Planning Board may, by resolution, grant an exception from any of the requirements of this chapter. The decision by the Planning Board shall be made within 30 days of receipt of the request or at the next regularly scheduled Planning Board meeting if not within 30 days. The Planning Board may grant such exceptions from the requirements of this chapter as may be reasonable and within the purposes and intent of this chapter if the enforcement of one or more of the provisions is impractical or will exact undue hardship because of peculiar conditions pertaining to the property in question but, in so granting, may require that a compensatory planting or compensatory payment be made. The Planning Board may also request the Village Engineer, Village Planner or other Village consultant to assist in evaluating such applications. The fees charged to the Village by all such consultants shall be paid by the applicant.

E. Planning Board review standards and fees. Where an application is submitted to the Planning Board to remove tree(s), said permit may be granted only for the following reasons and under the following conditions:

(1) Where the location of an existing tree or trees provides no alternative but to place a proposed structure outside the permitted building setbacks, and only if a said tree or trees to be removed are replaced on the property as a compensatory planting, or a compensatory payment is made to the Tree Fund, as directed by the Planning Board, to the extent removal exceeds the number of trees which may be removed as of right for the subject lot per Subsection B(3).

(2) Where no other reasonable alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio, lawn area, or garden area other than in the vicinity of an existing tree or trees, and only if a compensatory planting is made elsewhere on the property or a compensatory payment is made to the Tree Fund, as directed by the Planning Board, to the extent removal exceeds the number of trees which may be removed as of right for the subject lot per Subsection B(3).

(3) Where the area proposed for tree removal is to be occupied by a power, drainage, sewer or other utility

easement or right-of-way or where the area of tree removal is 20 feet or less from either side or around the perimeter of the foregoing, and only where there is no viable alternative route for such right-of-way, and the owner of the right-of-way requires such removal, and only if a compensatory planting is made elsewhere on the property or a compensatory payment is made to the Tree Fund, as directed by the Planning Board, to the extent removal exceeds the number of trees which may be removed as of right for the subject lot per Subsection B(3).

(4) Nonimminent peril.

(a) At the discretion of the Planning Board, and upon the express written finding of an arborist having ISA certification or having other comparable credentials acceptable to the Planning Board or other expert opinion acceptable to the Planning Board, that the proposed removal will alleviate a nonimminent peril to public safety or will likely not result in or cause, increase or aggravate any of the following conditions:

[1] Impaired growth or development of the remaining trees or shrubs on the property of the applicant or upon adjacent property;

[2] Soil erosion sediment or dust, drainage or sewerage problems or any other reasonably foreseeable dangerous or hazardous condition;

[3] Have a significant adverse impact upon existing biological and ecological systems;

[4] Significantly affect noise pollution by increasing noise levels to such a degree that a public nuisance may be anticipated or by significantly reducing the noise-dampening effect of vegetation near sensitive noise receptors;

[5] Significantly affect wildlife habitat available for wildlife existence and reproduction by causing emigration of wildlife to adjacent or associated ecosystems; or

[6] Significantly denude a visible buffer between adjacent properties.

(b) Such certification does not represent relief from the independent requirement that a compensatory planting be made elsewhere on the property or a compensatory payment be made to the Tree Fund, as directed by the Planning Board, to the extent removal exceeds the number of trees which may be removed as of right for the subject lot per Subsection B(3). The Planning Board may also request the Village Engineer, Village Planner or other Village consultant to assist in evaluating such applications. The fees charged to the Village by all such consultants shall be paid by the applicant.

(5) The fees for an application to the Planning Board for tree removal shall be \$250 or other such fee as set from time to time by resolution of the Village Board. The Planning Board may also request the Village Engineer, Village Planner or other Village consultant to assist in evaluating such applications. The fees charged to the Village by all such consultants shall be paid by the applicant.

F. Licensing of tree removal contractors.

(1) License required. No person shall fell, cut, trim, or remove any tree for hire within the Village, the branches or trunk of which is two inches or more thick at the point of severance, without a license.

(2) Application. Applications for such license shall be filed with the Village Clerk. The application shall contain the name and address of the applicant; whether the applicant is an individual, partnership or corporation; and the make, style and number of trucks or other vehicles and license plate numbers on same, to be used by the applicant in the business of tree trimming or hauling. The license fee required by this chapter shall accompany the application, and a receipt therefor shall be attached to the application. In addition, a policy of insurance required by this chapter shall be attached to said application and a copy of license issued by the County of Rockland. [See Subsection F(4) and (5), respectively, below.]

(3) License fee. The license fee shall be as established by resolution of the Village Board.

(4) Insurance. Each licensee shall file with the Village Clerk an insurance policy issued by an insurance company authorized to do business in the State of New York. Said policy shall insure the licensee in the sum of at least \$250,000 against liability per incident as may be imposed or awarded by law, and \$500,000 in the aggregate, as may be imposed or awarded by law on account of bodily injury or death of any person or persons

not covered by Workers' Compensation Law, and in the sum of at least \$250,000, against liability as may be imposed or awarded by law on account of damage to or destruction of property, in connection with the felling, cutting, trimming or hauling of trees for hire. The policy shall be endorsed to provide that it may not be cancelled by the carrier except upon at least 30 days' advance written notice to the Village Clerk. In the event such insurance is so cancelled and the licensee shall fail to replace the insurance with an acceptable substitute policy, the license shall be automatically suspended until proof of such insurance shall be provided to the Village Clerk.

(5) Granting of license. Upon the completion and filing of said application, payment of said license fee and providing proof of insurance and possessing a home improvement tree services (Code 15) license issued by the County of Rockland as determined by the Village Clerk, the Village Clerk shall grant the license. The Village Clerk shall keep a register of each license so issued, the number of licenses issued, the name of the person or firm to whom said license is issued and the date of issuance and the date of expiration. Denial of a license by the Village Clerk may be appealed to the Village Board in writing, which Board shall consider the appeal at the next regular meeting of the Village Board, provided same is no less than 10 days from receipt of the appeal. The Village Board shall render a decision within 15 days of hearing the appeal.

(6) License expiration. Each license shall expire on December 31 of the year of issuance.

§ 176-7. Penalties for offenses.

[Amended 6-22-2005 by L.L. No. 4-2005; 6-18-2008 by L.L. No. 3-2008]

A. The Village Engineer or other designee of the Village Board shall determine compliance with this chapter, and any person violating any of the terms or provisions of this chapter or refusing to comply with the rules and regulations of this chapter shall, upon conviction, be subject to a fine not exceeding \$250 for each offense. Each tree that is cut or damaged without appropriate approval from a Village agency shall constitute a single offense, up to a maximum penalty of \$10,000 per lot.

B. Persons developing properties which have received site plan or subdivision approval and who violate the terms and conditions of said approvals by clear-cutting, removing or otherwise damaging trees through construction, grading or other activities shall be subject to a fine not exceeding \$250 for each offense. Each tree that is cut or damaged shall constitute a single offense, up to a maximum penalty of \$10,000 per lot.

C. In addition to being subject to prosecution and fining, any person having violated this chapter shall also be referred to the Planning Board for the purpose of developing a tree remediation plan, showing the existing and proposed landscaping conditions on the premises in question, and which shall be designed to mitigate the effects of the offense, which shall be known as the "compensatory planting plan" or, if the Planning Board approves in lieu thereof, the making of a compensatory payment to the Tree Fund (See Subsection D below.) The Planning Board may also require such remedial or protective measures to be undertaken as may be necessary to protect the balance of the original landscaping, such as, but not limited to, the use of snow fencing, chain link fencing, or other protective measures. The Planning Board may also request the Village Engineer, Village Planner or other Village consultant to assist in evaluating the violation and recommending a remediation. The fees charged to the Village by such consultants shall be paid by the violator.

D. In addition to any penalty, the violator will be required to effectuate a compensatory planting by replacing in kind each and every tree removed, cut down or destroyed in violation of this chapter. If a tree was so large and mature that it cannot be replaced, the Planning Board may require the planting of multiple trees instead, based on the sole determination of the Planning Board of the number, species and size of trees necessary to meet the objectives of this chapter. In the alternative, in appropriate circumstances where the planting of additional trees is impractical in the judgment of the Planning Board, it may accept compensatory payment to the Tree Fund in lieu of planting as it may direct or as it may approve upon the request of the violator. No certificate of occupancy shall be issued for new construction on the property on which occurred any violation of this chapter unless and until the provisions of this subsection have been complied with.

E. Where a tree of any size that is removed, cut down or destroyed is in a conservation easement or conservation area designated on a plan approved by the Planning Board, fines may be doubled.

F. Whenever the Village Engineer or designee as determined by the Village Board shall determine that any

activity is being conducted in violation of this chapter, then the Village Engineer shall request that the Building Inspector notify the owner of the property, the owner's agent, or the person performing the work to suspend and halt work. Such direction by the Building Inspector (a stop-work order) shall be in writing and delivered to the owner, the owner's agent, or the person performing the work or affixed to the site. Such stop-work order shall state the reasons therefor and the conditions under which the work may be resumed.

G. Violation by licensed tree removers. Any tree remover, licensed by the Village of Montebello, who violates the provisions of this chapter shall, at the discretion of the Village Engineer or other designee of the Village Board, have his license revoked and shall not have a new license renewed for a period of not less than two years. Said licensee shall have 15 days to challenge said determination by filing a written appeal to the Village Board, which shall hold a hearing on said appeal within 35 days of receipt of said appeal and shall render a determination within 15 days of the close of said hearing. Accused violators may continue working during the pendency of an appeal only if they have posted an acceptable letter of credit or cash deposit in the amount of \$5,000.

H. Violation by unlicensed tree removers. Violators of § 176-6 F(1) shall be subject to a fine not exceeding \$5,000 for each offense.

§ 176-8. Supersession of other laws.

This chapter supersedes and is in derogation of Chapter 40 of the Code of the Town of Ramapo, County of Rockland, State of New York. This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor. It also supersedes Local Law No. 27 of 1988 and Local Law No. 2 of 1993.