



TOWN of GREENBURGH
Local Law No. /20xx

A local law creating a new Chapter 260, to be entitled, “Trees, Community Management” to replace the existing Chapter entitled, “Trees” in the Code of the Town of Greenburgh, to provide for the preservation and maintenance of trees under New York State Constitution Article IX and New York Municipal Home Rule Law § 10.

§ 1. Repeal of existing Chapter 260 Entitled “Trees.”

§ 2. Enactment of Chapter 260 Entitled “Trees, Community Management.”

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§ 3. Severability.

§ 4. Supersession.

§ 5. Effective Date.

§ 1. The Town Board of the Town of Greenburgh hereby repeals the existing Chapter 260 entitled “Trees” in its entirety.

§ 2. The Town Board of the Town of Greenburgh hereby adopts a new Chapter 260 entitled “Trees, Community Management” as follows:

§ 260-1. Legislative intent.

- A. Trees are necessary to protect the health, safety, environment, ecosystems and general welfare of the inhabitants and properties in the Town of Greenburgh. The Town recognizes that preservation of the environment is the responsibility of the entire community. Trees provide oxygen, impede soil erosion, aid water absorption, ameliorate against potential flooding, and absorb CO₂ and other pollutants and breathable particulate matter; provide shade, screening, privacy, green space and aesthetic appeal; absorb and lessen impacts from winds and act as natural noise barriers; and provide other environmental benefits and generally enhance the quality of life and values of properties within the Town.
- B. The intent of this chapter is to regulate the quantity, quality, *canopy*, and distribution of trees within the Town of Greenburgh, as prescribed herein. In implementation thereof, the purpose of this chapter is to regulate the quantity of healthy trees within the community through the establishment of tree replacement standards, to regulate the quality and *canopy* of trees through adoption of technical standards and specifications for species selection and diversity, tree planting, tree maintenance, and tree protection, and to regulate the distribution of trees so that their function is maximized.

§ 260-2. Definitions.

The terms defined in § 260-14 shall have the meanings indicated therein for purposes of this chapter.

§ 260-3. Prohibitions.

- A. No *person* shall cut down, remove, perform *topping*, excessively prune, cause *injury* to, damage, wound, break, kill, destroy, or commit any act which will lead to the eventual removal of any tree regulated by this chapter, without first obtaining a *tree removal permit* issued pursuant to this chapter, which permit shall be in force and effect at the time of such tree removal.
- B. No *person* shall take any action within the *critical root zone* which will cause *injury* to any tree regulated by this chapter, unless written approval is issued by the *Approval Authority*.
- C. No *person* shall fasten or attach to any tree any sign, poster, bill, notice, advertisement of any kind, birdhouse, clothesline or any other object, in a manner which will damage or cause *injury* to a tree, in any way.

- D. No *person* shall perform *clear cutting* on any property within the Town, as defined in this chapter.
- E. No owner, lessee or occupant of any land or any part thereof shall install on any such lot or land any trees, shrubs or bushes which are classified as a prohibited *invasive species* in 6 NYCRR Part 575 Prohibited and Regulated Invasive Species (http://www.dec.ny.gov/docs/lands_forests_pdf/isprohibitedplants2.pdf)

§ 260-4. Regulated activities.

- A. Unless in possession of a *tree removal permit* issued pursuant to this chapter, no *person* shall purposely, carelessly or negligently cut down, remove, perform *topping*, excessively prune, cause *injury* to, damage, wound, break, kill, destroy, or commit any act which will lead to the eventual removal of:
 - (1) Any tree that is greater than eight (8) inches in diameter (25” circumference) at breast height (*DBH*), measured at four and one-half (4.5’) feet above natural grade level.
 - (2) Any tree that is greater than four (4) inches *DBH* (12.5” circumference) within a wetland, watercourse or wetland/watercourse buffer as defined in Chapter 280, or within an excessively steep slope, as defined in Chapter 245 of the Code of the Town of Greenburgh.
 - (3) Any tree designated by the New York State Department of Environmental Conservation as a protected native plant, which list can be found at: <https://govt.westlaw.com/nycrr/Document/I21efe775c22211ddb7c8fb397c5bd26b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29>.
 - (4) Any *Designated Tree*, as defined in § 260-14, which includes, but is not limited to: any *Tree of Significance*; any tree within a *designated buffer area* or *conservation easement area* as designated on an approved *site plan* or subdivision plat; any tree specifically designated to be planted or preserved by the Town Board, the Planning Board, the Zoning Board of Appeals, the Historic and Landmarks Preservation Board, or the *Forestry Officer*; any tree scheduled for protection, preservation or conservation, as shown on an approved *Tree Protection and Preservation Plan*; and, any tree planted as part of an approved *Landscape Site Plan*, or as required in connection with any approved *tree removal permit*.
 - (5) Any tree growing within the public street right-of-way, outside of private property, and any tree growing within the limits of a Town Park or on Town-owned property.

§ 260-5. Diseased or Infected Trees.

- A. No owner, lessee or occupant of any land or any part thereof shall permit or maintain on any such lot or land any trees, shrubs or bushes or parts thereof which are infected or infested with organisms which cause or tend to cause disease, destruction or

damage to such trees, shrubs or bushes and which spread by passing from such trees, shrubs or bushes to other trees, shrubs or bushes thereby causing destruction or damage to the property of others. It shall be the duty of any such owner, lessee or occupant to destroy and remove all such organisms on written notice from the Town, within a reasonable period of time, even if this requires the removal of said trees, shrubs or bushes. In the event such owner, lessee or occupant does not comply within the time period provided in the notice, the Town shall have the right to cause removal of any such infected or infested trees, shrubs or bushes upon reasonable notice to the owner, and the cost of removal shall be a tax lien on the owner's property until paid.

§ 260-6. Hazardous trees.

- A. In the event that the *Forestry Officer* receives a *hazardous tree* removal permit application with appropriate proof related to the condition of a tree or trees, and makes a determination that a *regulated tree* or trees pose a hazard to life or property, the *Forestry Officer* shall have the right to grant immediate approval for the removal of said tree or trees and to waive all notifications as required under this chapter. In the event that such approval is granted, the *Forestry Officer* will require appropriate remediation in accordance with § 260-8.
- B. A property owner shall be permitted to submit a *hazardous tree* removal permit application after a *regulated tree* is removed or cut down when such removal is proven necessary for the immediate protection of public health, safety or property. The following will apply:
- (1) If a *regulated tree* is removed or cut down pursuant to this subsection, within five (5) business days after such act, the *person* on whose property the tree is located must submit a *hazardous tree* removal permit application to the Department of Community Development and Conservation, on forms prescribed by the Town of Greenburgh.
 - (2) The *Forestry Officer* will require photographs, or other appropriate documentation explaining and confirming the nature of the immediate threat. In the event three (3) or more *regulated trees* have been removed, a tree report from a *Certified Arborist* may be required in addition to any other required documentation.
 - (3) The *Forestry Officer* will require appropriate remediation in accordance with § 260-8.
- C. If there is a catastrophic weather event where significant tree damage has occurred, the Town Supervisor may declare a suspension of the *hazardous tree* removal permit application, notice and other requirements, as set forth above, for a specified period of duration and within specific neighborhoods. The *Forestry Officer* shall have the authority to require appropriate remediation in accordance with § 260-8.

§ 260-7. Permit procedure; Permit issuance.

- A. All applications for tree removal permits and *hazardous tree* removal permits shall be made in writing upon forms prescribed by the Town of Greenburgh. The *Approval Authority* may require, in addition to the information set forth on the general forms, such further information as it deems pertinent to the individual circumstances. The *Approval Authority* is not required to process any application unless and until all relevant information has been supplied.
- B. When any *person* applying for a building permit, subdivision, site plan, special permit, variance(s), stormwater management permit, fill permit or other permit or approval which involves any act regulated under this chapter, the *Forestry Officer* will endeavor to coordinate the time periods under this chapter with the other approvals and permits, to the extent practicable. In the event an application would require deviation from a plan previously approved by a Board of the Town, the *Forestry Officer* will coordinate administrative processing and decision on the tree removal permit application with the appropriate Board.
- C. At the time a tree removal permit application is submitted, and until a *tree removal permit* is granted or denied, the *trunk* of all trees proposed for removal shall be encircled with orange tape or other method of tagging, as authorized by the *Approval Authority*, at 4.5 feet above the ground. No *person* shall cut down, remove, perform *topping*, excessively prune, cause *injury* to, damage, wound, break, kill, destroy, or commit any act which will lead to the eventual removal of any tree regulated by this chapter, until the administrative process set forth herein is completed, unless specific written approval is provided by the *Approval Authority* prior to work taking place.
- D. The appropriate *Approval Authority* may refuse to accept an application until the *applicant* has complied with each of the requirements set forth in this chapter.
- E. If the *Approval Authority* is the Commissioner of the Department of Public Works or the Commissioner of the Department of Parks and Recreation, he or she shall have up to 20 business days from the date the application is deemed complete, to grant, grant with conditions or deny the permit application. The *Forestry Officer* shall have up to 10 business days from the conclusion of the written comment period, as detailed in subsection H below, to grant, grant with conditions or deny the permit application.
- F. If the *Approval Authority* is the Town Board, Planning Board, Zoning Board of Appeals or Historic and Landmarks Preservation Board:
 - (1) Such Board shall not make a decision on the tree removal permit application until such time as it renders its final approval decision, and
 - (2) Information regarding the tree removal permit application shall be included in any public hearing notification process for that particular application so as to satisfy the notification requirement under this chapter.

- G. If a tree is located within a *designated buffer area* or *conservation easement area*, the tree removal permit application must be submitted to the Board that has jurisdiction over the *designated buffer area* or *conservation easement area*, or the area specifically designated to be planted or preserved, unless proof is provided to the satisfaction of the *Forestry Officer* that said tree or trees are diseased, dead, invasive or hazardous to life or property, whereby § 260-5 and § 260-6 shall apply if applicable.
- H. Upon a determination by the *Forestry Officer* that an application has been submitted in full and does not qualify as a *hazardous tree* removal permit, the *applicant* will be required to send a copy of the application, along with a cover letter from the *Forestry Officer*, via U.S. Postal Service regular mail, within five (5) business days following this determination, to all property owners adjoining the perimeter of the site, the owners of property directly across the street from the subject site, and to the Chairperson of the Conservation Advisory Council. In the event the subject site is adjoining or across the street from a cooperative or condominium, materials shall be sent to the managing agent. The cover letter prepared by the *Forestry Officer* shall state that all documents filed in connection with the application are available for public inspection at the Department of Community Development and Conservation, and that written comments may be submitted to the *Forestry Officer* within ten (10) business days of the date of mailing, for consideration prior to the issuance of any final determination on the subject application. The *applicant* must provide an affidavit of mailing to the *Forestry Officer* evidencing the date the materials were mailed and to whom they were mailed.
- I. In all cases, the *tree removal permit* must be on site during tree removal activities, and until all site work is completed. For projects requiring approval from the Town Building Department, the *tree removal permit* must remain on site until a Final Certificate of Occupancy or Completion is issued by the Building Department.
- J. The *Approval Authority* may grant, grant with conditions, or deny a tree removal permit application based upon the standards set forth in § 260-8, subject to full compliance with the statutes, laws, ordinances, rules and regulations of the Town otherwise affecting the property. Nothing in this chapter shall negate a condition of approval by any Board of the Town which requires the replanting of trees as a part of such approval.
- K. The *Approval Authority* may impose permit conditions or deny permits for tree removal if the standards set forth in § 260-8 and in the Town of Greenburgh Tree Technical Manual are not met.

§ 260-8. Standards for permits; Replacement of trees.

- A. In determining whether or not a permit should be granted, and, if granted, whether conditions should be included with the permit, or denied, the *Approval Authority* shall consider, in order, the following:

- (1) If there is a need for the action to be taken promptly, in that the tree is a hazard and:
 - (a) Endangering the public or public property.
 - (b) Endangering the owner or property of the owner.
 - (c) Endangering an adjoining property owner or the property of an adjoining property owner.
 - (2) The condition and species of the tree with respect to overall health, disease, insect attack, damage, interference and potential interference with utility services, and proximity to existing trees, existing structures or proposed structures.
 - (3) The environmental impact of the tree removal including, but not limited to, the effect of the tree removal on erosion, soil moisture retention, steep slopes, flow of surface waters and drainage, CO2 and breathable particulate removal, ecosystems supporting wildlife, or any other environmental factor, and the aesthetic composition of the land and surrounding area.
 - (4) The necessity of the tree removal in order to achieve the *applicant's* goals including, but not limited to, whether the location of the tree prevents the property owner from undertaking otherwise proposed construction or alteration (including, but not limited to, teardowns, renovations and/or expansions) and the possible or practicable alternatives to the tree removal, including relocation of improvements.
 - (5) Whether the proposed tree removal will cause *injury* to, cut, damage, destroy or remove more trees than is reasonably necessary to achieve the goals of the *applicant*, or is inconsistent with the stated purposes of this chapter and the standards and specifications in this section and in the Town of Greenburgh Tree Technical Manual.
 - (6) Considerations of land use and the general welfare and overall environment of the area.
 - (7) The species of the tree and whether any tree in question is a tree worthy of preservation due to unusual characteristics such as age, history, size, rarity, financial value, visual importance to the neighborhood, or being located within a Conservation District zone as defined in § 285-9 et. seq.
- B. The following standards are required to be met in order to grant, or grant with conditions, a *tree removal permit* for a tree or trees under this chapter:

(1) Tree Replacement:

- (a) Replacement trees shall be planted on site equal to at least 90% of the environmental value of the trees proposed to be removed; provided that, if the property is an *Undeveloped Forested Property* and the permit is sought in connection with a building permit to build a *commercial facility* or a residence, or in connection with any site plan approval, then the environmental value of the replacement trees planted on site shall be equal to at least 30% of the environmental value of the trees proposed to be removed.
- (b) The environmental value of removed and replacement trees shall be determined by using the iTree methodology ~~of~~on the U.S. Forest Service website, the National Tree Benefit Calculator on the Arbor Day Foundation website, or other methodology selected by the applicant and deemed acceptable ~~to~~by the *Forestry Officer*. In calculating the percentages specified

above, the *applicant* shall take into account the environmental values (gallons of stormwater absorption, ~~pounds of breathable particulate removal~~ and pounds of CO2 removal) of the replacement trees as of when they reach *mid-maturity*. All new trees to be planted must be selected from the *Town of Greenburgh Official Replacement Planting List*. At least 50% of the replacement trees shall be native trees, as identified in the *Town of Greenburgh Official Replacement Planting List*. The location of the replacement trees shall be satisfactory to the *Approval Authority*, who shall take into consideration the topography of the site and the potential for stormwater runoff onto other properties and public streets.

- (c) All replacement trees shall be shown on a landscape plan acceptable to the *Approval Authority*, which shall consider the total number of trees proposed for removal and other relevant factors such as the topography of the area where trees are proposed for removal. Replacement trees shall be a minimum 2-inch *caliper* size for deciduous trees, and 6-feet in height for coniferous (evergreen) trees, unless the *Forestry Officer* provides a waiver or permits modifications to minimum size standards due to topography or other conditions of the property. If and to the extent the *Approval Authority* determines that one or more trees required to be planted as replacement trees cannot be planted due to shallow soil conditions on the property, property size or like prohibitive conditions, alternate plantings of shrubs on site satisfactory to the *Forestry Officer* to fulfill the legislative intent of this chapter may be made.
 - (d) Planting of replacement trees are not required if and to the extent the *Approval Authority* determines that the removal of trees on a property is required as part of good forestry practice to improve the health of remaining trees. Planting of replacement trees are not required to replace *invasive species* of trees which are removed, and in no event shall any *invasive species* of trees or plants be planted as replacements.
 - (e) If an *applicant* has violated this ordinance and is seeking a *tree removal permit*, the replacement tree standard is 120% of the environmental value of the trees cut down, removed, topped, excessively pruned, injured, damaged, wounded, broken, killed or destroyed, or, depending on site characteristics, such other percentage deemed acceptable to the *Forestry Officer*.
- (2) In order to increase the diversity of the age, genera and species in the community tree canopy, consideration shall be given to preserve mature trees and trees of significance, and to plant trees and shrubs on sites where the tree population is predominantly over mature and in the last quarter of its lifecycle. When selecting plant material for a landscape *site plan*, to achieve a variety of interest in form, color and height, and to reduce the opportunity for a pest or disease outbreak generally associated with the planting of monocultures, the following table shall be utilized:

Table 1. Plant Diversity Table for Tree Replacements under this Chapter

Number of Plant Materials	Min. Number of Genera	Max. % of any one Genus
0-3	1	100
4-6	2	50
7-10	3	40
11-15	4	33
16-20	5	25
21-35	6	20
36-50	8	20
>50	10	20

- (3) The *Forestry Officer* shall have the authority to waive or permit modifications to the above diversity requirements, based on the characteristics of the subject property and surrounding properties.
- (4) If a tree to be cut and removed is in excess of 12 inches *DBH* (37.5 inches in circumference) or 30 feet in height, a *Licensed Professional Tree Care Company* must be used to perform the cutting and removal. The *Forestry Officer* may waive such requirement in writing if the *fall zone* is more than thirty feet away from any principal or accessory structure on any adjoining property. Prior to permit issuance, the *applicant* shall provide the *Licensed Professional Tree Care Company's* name, address, telephone number, name of job manager, certificate of liability insurance naming "Town of Greenburgh" as additionally insured, and a copy of their New York State Workers Compensation insurance. A *contractor* may be used where the tree removal is part of an approved permit issued by any Board or Officer of the Town and the *contractor* is approved for tree removal by the *Forestry Officer*, provided the information outlined above is submitted in full.
- C. If an *applicant* proposes the removal of ten (10) or more trees as part of any application (not including *invasive species*), the *Approval Authority* is hereby authorized and empowered to obtain the assistance, when necessary, of a professional consultant selected by it, especially qualified by reason of training or experience in tree assessment, valuation, planting, preservation and landscaping or landscape architecture or engineering, at the *applicant's* expense (and with 10 days prior notice to the *applicant*), which expense shall be reasonable and customary for such services, in order to fully evaluate a tree removal permit application, and carry out any requirements or conditions of a permit issued under this chapter.
- D. If a tree approved for removal is subject to § 260-4A(2), pertaining to trees within a wetland, watercourse or adjacent buffer area, or within an excessively steep slope, whatever additional standards are applicable under Chapter 280 and/or Chapter 245, as appropriate, to *disturbances* within such regulated areas, are required to be complied with in order for a *tree removal permit* to be issued.
- E. If a tree approved for removal is subject to § 260-4A(3), pertaining to trees designated by the New York State Department of Environmental Conservation as a

protected native plant, the environmental value of such tree must be replaced by a native tree or trees and additionally any permit must be subject to any and all approvals required by the New York State Department of Environmental Conservation.

- F. The property owner shall warrant that all *replacement plantings* shall survive and be in a healthy state on the third anniversary of the date on which the *replacement plantings* have been provisionally accepted by the *Forestry Officer*, or designee, as complying with the permit conditions. The property owner shall be responsible to promptly replant, during the next April - November growing season, any *replacement plantings* which did not survive in a healthy state, and the permit conditions shall not be satisfied until such warranty *replacement plantings* have survived in a healthy state for two years from when the *replacement plantings* have been provisionally accepted by the *Forestry Officer*. Should the permit holder fail to replace the trees voluntarily, written demand for such replacement within a specified time period, may be issued by the *Forestry Officer*. Should the permit holder fail to replace the trees pursuant to demand, and within the specified period of time, the *Forestry Officer* shall have the right to serve a summons and/or declare the maintenance bond, if any, in default, and apply the escrow cash deposit and/or the proceeds of the bond to replace the required plantings.
- G. Tree canopy cover in parking lot areas. A minimum of 1 tree per each 15 parking spaces, planted within a landscaped island, is required in connection with all commercial and multi-family development proposals. Parking areas shall be shaded by *medium canopy* and *large canopy trees* as listed in the *Town of Greenburgh Official Replacement Planting List*. Tree canopy cover and trees planted in parking lot areas shall conform to the Town of Greenburgh ~~standards for~~ parking lot tree shading standards.
- H. Streetscape tree requirements. Trees shall be required as part of the streetscape on the private property side of the lot line fronting the roadway, in connection with all commercial developments and all residential developments involving the construction of a new residence. Tree establishment shall be performed in accordance with the standards and specifications set forth in the Town of Greenburgh Tree Technical Manual.
- I. Landscape Design Criteria:
 - (1) Landscape *Site Plans* shall be prepared by a registered landscape architect or appropriate licensed professional, and submitted to the *Approval Authority* for acceptance prior to a tree removal permit application being reviewed, in connection with: (i) all commercial properties, (ii) all residential development projects, and (iii) when more than ten (10) trees on any property are proposed for removal. The *Forestry Officer* may waive such *site plan* requirement, in the event, taking into account all trees removed from such property within the preceding five (5) year period, the aggregate tree removal proposed is less than 24 inches *DBH* (75 inches in circumference) and may in other circumstances s/he deems

appropriate given the health and condition of the tree(s) and the relevant topography, whereby a written letter outlining all proposed landscaping may be submitted in the absence of a landscape *site plan*.

- (a) *Replacement plantings* to be located in landscape strips, parking lot islands, environmentally sensitive areas such as wetlands, watercourses, adjacent buffer areas and on areas of slope greater than 15% shall be distributed over their entire lengths and widths.
 - (b) Landscaping may be arranged symmetrically (formal) or asymmetrically (informal) and shall be grouped to form plant clusters when practicable. Informal groupings which reflect the natural character of the region are encouraged.
- J. All *replacement plantings* shall be planted and maintained according to the specifications outlined in the Town of Greenburgh Tree Technical Manual, and shall retain their plant identification tag until a final inspection is conducted by the Town.
- K. All *replacement plantings* and associated restoration work must be substantially completed within one year from the date of issuance of the permit, except that the permit may be extended by the *Approval Authority*, who shall have the discretion to grant such an extension upon the *applicant's* written request.
- L. Upon completion of all protection, replanting and restoration work to the satisfaction of the *Approval Authority*, the performance bond shall be canceled and replaced with a maintenance bond to be approved by the Town Attorney and to run for a term of three (3) full growing seasons. The growing season for Westchester County is April through November. The 10% cash in escrow shall remain on deposit with the Town until the maintenance bond is canceled. If new trees or shrubs planted as part of the restoration work do not survive three (3) full growing seasons, they shall be replaced in-kind, and the term of the maintenance bond shall be extended to run for a term of three (3) full growing seasons from the time any necessary replanting has taken place, to the satisfaction of the *Forestry Officer*.
- M. After proper installation of new plantings pursuant to this chapter and the standards and specifications outlined in the Town of Greenburgh Tree Technical Manual, removal of all debris from the project site shall occur immediately, so that the property is left in a neat and orderly condition in accordance with good and acceptable planting practices.
- N. The Town Board may, by resolution, modify any of the requirements of this chapter with respect to trees proposed to be cut or removed by any municipal department of the Town, taking into consideration the standards of this law, and sound municipal forestry practices.

§ 260-9. Forestry Officer duties.

- A. The Town Board shall appoint a qualified *Forestry Officer* who shall serve at the pleasure of the Town Board to administer and enforce this chapter. The *Forestry Officer* shall:
- (1) Receive all applications under this chapter, and maintain accurate records of all applications and decisions under this chapter and activities taken by the Town in connection therewith;
 - (2) Prepare and publish forms, guidelines, technical manuals, and removal, planting, maintenance and inspection procedures, necessary or convenient for administering this chapter;
 - (3) Inspect, or cause to be inspected, the trees described in applications and decisions under this chapter, before and after any site work, and before the release of any bond;
 - (4) Grant, grant with conditions or deny in writing applications under this chapter in accordance with the standards herein, in those matters where he/she is the designated *Approval Authority*;
 - (5) Serve as advisor to the Town Board, Planning Board, Zoning Board of Appeals, Historic and Landmarks Preservation Board and Conservation Advisory Council with respect to this chapter and enforcement of decisions hereunder;
 - (6) Assist with advising the Town Board on management of trees relating to public safety, including potential loss of power during severe weather events, and, in connection therewith, to hire with Town Board approval, a *Certified Arborist* to assist him/her in advising the Town Board;
 - (7) Maintain statistics on how many trees are removed and replaced within Unincorporated Greenburgh pursuant to this chapter each calendar year, and report such statistics to the Town Board, Planning Board, Zoning Board of Appeals and Conservation Advisory Council; and
 - (8) Carry out any and all related duties with respect to this chapter.

§ 260-10. Tree technical manual.

- A. The Town Board, through the Department of Community Development and Conservation, shall issue guidelines, standards, specifications, and procedures necessary or convenient for implementation of this chapter, which shall be known as the Tree Technical Manual. The Tree Technical Manual will be made readily available to the public and those performing work with respect to trees in the Town, through the Town's website (www.greenburghny.com), and shall include, but need not be limited to, standards and specifications regarding:
- (1) Protection of trees during construction and development;
 - (2) Replacement requirements for trees permitted to be removed pursuant to this chapter;
 - (3) Maintenance of *regulated trees* (including but not limited to *tree pruning*, irrigation, and protection from pests and disease);

- (4) The format and content of tree reports required to be submitted pursuant to this chapter;
 - (5) The criteria for determining whether a tree is hazardous within the meaning of this chapter.
- B. In the event of any inconsistency between this chapter and the Tree Technical Manual, the provisions of this chapter shall prevail.

§ 260-11. Permit notification and public hearing requirements.

- A. When the *Approval Authority* is the Town Board or Planning Board, information regarding the tree removal permit application shall be included in the public hearing notification process for that particular application in order to satisfy the notification requirements under this chapter.
- B. In addition to Section 260-7(H), when the *Approval Authority* is the *Forestry Officer*, a copy of all decisions or determinations made by the *Forestry Officer* to grant a permit with or without conditions pursuant to this chapter, shall be sent by the *applicant*, via U.S. Postal Service regular mail, within five (5) business days of the date of such decision or determination, to all property owners adjoining the perimeter of the site, those properties directly across the street, and to the Chairperson of the Conservation Advisory Council. In the event the subject site is adjoining or across the street from a cooperative or condominium, notice shall be provided to the managing agent. The *applicant* must provide an affidavit of mailing to the *Forestry Officer* evidencing the date the decision was mailed and to whom it was mailed. No tree removal shall take place until ten (10) business days after the *Forestry Officer* has confirmed receipt of the evidence of mailing.
- (1) This notice requirement may be waived by the *Forestry Officer*, in writing, in instances where:
- (a) There is a need for the action to be taken promptly, in that the tree is a *hazardous tree*, and:
 - [1] Endangering the public or public property.
 - [2] Endangering the owner or property of the owner.
 - [3] Endangering an adjoining property owner or the property of an adjoining property owner.
 - (b) The tree *trunk* is located more than one and one half times (1.5x) the height of the tree from any property line as shown on a submitted *site plan*, at the discretion of the *Forestry Officer*, if he or she determines that there will be no or minimal impact on adjacent properties.
- C. The Town shall not be required to give any notification under this chapter with respect to the removal of any diseased or hazardous *public/street tree* so designated by a *Certified Arborist* or with respect to any *public/street tree* removals which have been part of a public hearing before the Town Board or Planning Board.

§ 260-12. Fees; Permit Suspension or Revocation; Bonds; Enforcement; Fines.

- A. Fees for applications under this chapter shall be established from time to time by the Town Board. Fees for applications to remove one (1) or two (2) trees in a calendar year shall be 50% of the otherwise applicable fee. No fee shall be charged in connection with the removal of *invasive* species of trees. If a consultant is engaged by the *Approval Authority* as provided for in this chapter, his/her fees and expenses shall be borne by the *applicant*. No application will be processed without payment of the application fee, and processing will be suspended if the fees and expenses of any such Town consultant are not promptly paid by the *applicant*.
- B. The Town Board, Planning Board, *Forestry Officer*, Commissioner of the Department of Public Works, Commissioner of the Department of Parks and Recreation, or designee may, in writing, suspend or revoke a permit or issue a stop-work order if it finds that there is a violation of this chapter; or if the *applicant* or its representatives or agents has not complied with the terms and conditions of a permit or has exceeded the authority granted in the permit or has provided written information, in whole or in part, which proves to be materially false, deceptive, incomplete or inaccurate.
- C. When the *Approval Authority* deems it necessary to ensure the protection of trees scheduled for preservation or conservation, and to ensure the installation of required *replacement plantings*, the *Approval Authority* may require that the *applicant* furnish the Town with a performance bond, cash escrow and/or irrevocable letter of credit from an approved financial institution or surety, to be approved by the Town Attorney, in an amount sufficient to cover 90% of the protection, planting and restoration work to be completed in accordance with the approved plans accompanying all applications. The remaining 10% of the cost of protection, planting and restoration work shall be deposited in a cash escrow account maintained by the Town, and released upon the running of the warranty period and the satisfaction of all of the permit conditions. Under all circumstances, the performance bond, cash escrow, or irrevocable letter of credit obtained by the permit holder, shall continue in full force and effect until there has been full compliance with, and approval of, all restoration work required by the *Approval Authority*. In the event planting and restoration work has not been substantially completed within one (1) year and no permit extension has been applied for or granted, the *Approval Authority* shall have the right to consider the permit abandoned and declare the performance bond, cash escrow, or irrevocable letter of credit in default, and may apply the escrow deposit and/or the proceeds of the bond or letter of credit to perform all required planting and restoration work. By accepting a permit, the *applicant* and property owner thereby agree to this procedure and grant unconditional access to the land for such restoration purposes.
- D. In addition, a violator will be required to plant, pursuant to the standards in this chapter, replacement tree or trees having an environmental value of 120% for each tree cut down, removed, topped, excessively pruned, injured, damaged, wounded, broken, killed, destroyed, or for any committed which will lead to the eventual removal of such tree in violation of this chapter, or, depending on site characteristics,

such other percentage deemed acceptable to the *Forestry Officer*, which shall be selected from the *Town of Greenburgh Official Replacement Planting List*.

E. This chapter shall be enforced by the *Forestry Officer*; Greenburgh Police Department, Building Inspector, Greenburgh Department of Public Works and Greenburgh Department of Parks and Recreation, as appropriate; and such others as the Town Board may designate. By accepting a permit under this chapter, the property owner consents to entry on its property by the foregoing officials, or designees, for inspection and enforcement purposes.

F. Any *person* violating any provision of this chapter shall be guilty of a violation and upon conviction shall be subject to fines per tree as follows:

Trees up to and including 8 inches DBH, up to	\$500.00
Trees greater than 8 inches DBH and up to and including 12 inches DBH, up to	\$1,500.00
Trees greater than 12 inches DBH, up to	\$3,000.00
Public/Street trees, trees within a wetland, watercourse or wetland/watercourse buffer, or in an excessively steep slope, up to	\$4,000.00
Trees of Significance, up to	\$5,000.00
Designated Trees, up to	\$5,000.00
Trees within Conservation Easement Areas or Designated Buffer Areas, or trees designated by the New York State Department of Environmental Conservation as a protected native plant, up to	\$7,500.00

Fines per tree shall be doubled in the event that more than 5 *regulated trees* on a site are cut down, removed, topped, excessively pruned, injured, damaged, wounded, broken, killed, destroyed, or for any act committed which will lead to the eventual removal of such tree without a permit, or, if *clear cutting* has been determined to have taken place, or, if any tree is cut down, removed, topped, excessively pruned, injured, damaged, wounded, broken, killed, destroyed, or any act is committed which will lead to the eventual removal of such tree, while an application is pending. Maximum fines will be issued to any repeat offender.

G. In addition thereto, any *person* or entity violating any provision of this chapter may be subject to a civil penalty enforceable and collectible by the Town in the amount of up to \$1,000 each day the violation continues for every tree.

H. No building permit or other permit or approval may be issued, and if previously issued shall be suspended, until violations under this chapter are resolved and a remediation plan is accepted by the *Approval Authority*.

I. A *Licensed Professional Tree Care Company* or a *contractor* hired to remove *regulated trees* in the Town, must confirm that a valid *tree removal permit* is in place for each tree to be removed, by contacting the *Forestry Officer* and receiving in return an email providing clearance to proceed. Any *Licensed Professional Tree Care Company* or *contractor* who violates any of the provisions of this chapter or which has cut down, removed, topped, excessively pruned, injured, damaged, wounded, broken, killed, destroyed, or has committed any act which will lead to the eventual

removal of any tree without a permit will be subject to a fine of up to \$5,000 per tree, in addition to any fines levied against the property owner. The *Forestry Officer* shall notify Westchester County of the name of any *Licensed Professional Tree Care Company* or *contractor* who has violated this ordinance.

- J. All fines collected by the Town in connection with this chapter shall be appropriated for tree planting throughout the Town, under the direct supervision of the *Forestry Officer*.

§ 260-13. Appeals.

- A. Any determination, decision or order of the *Approval Authority* may be judicially reviewed by the *applicant* or any other aggrieved party by the commencement of an action pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

§ 260-14. Defined Terms.

The following terms shall have the meanings indicated for purposes of the chapter:

APPLICANT – Any *person*, corporation, partnership, firm or any other entity making an application pursuant to this chapter.

APPROVAL AUTHORITY – If tree removal relates to an application which, under the Town Code, is subject to the approval of a Board of the Town, the *Approval Authority* is the Board having the final approval over such application. Otherwise, the *Approval Authority* is the *Forestry Officer*, Commissioner of the Department of Public Works or the Commissioner of the Department of Parks and Recreation, as designated in this chapter.

CALIPER – The diameter of a tree *trunk* measured at six (6) inches above the ground for up to and including four (4) inch diameter size trees, and measured at twelve (12) inches above the ground for larger sized trees. Used for nursery stock and newly planted trees, and not for established trees.

CANOPY – The foliar cover of trees or groups of trees.

CANOPY TREE – A large or medium tree with a *crow*n size and shape that will typically provide significant shade and beneficial effects on temperature, air quality, water quality, and other environmental conditions, at maturity. Synonymous with “shade tree.”

CERTIFIED ARBORIST – An individual who has obtained knowledge and competency through an accredited body including, but not limited to, the current International Society of Arboriculture arborist certification program, or is a member of the American Society of Consulting Arborists, or a professional forester in the New York State Cooperating Consultant Forester Program, or is a member of the New Jersey Society of Certified Tree Experts, or is a licensed arborist with the State of Connecticut Department of Energy and Environmental Protection.

CLEAR CUTTING – The *injury* and/or removal of 33% or more of trees from a property without the benefit of a current and valid *tree removal permit*. For purposes of this calculation, trees located within wetlands, watercourses or adjacent buffer areas, or located within an excessively steep slope, which are injured and/or removed, shall be counted double.

COMMERCIAL FACILITY – An office building, retail store, warehouse, storage facility, shipping facility, theater, restaurant or any establishment which charges a fee for goods or services.

CONSERVATION EASEMENT AREA – An encumbrance placed on a portion of a property, in order to protect an associated resource.

CONTRACTOR – A *person*, corporation, partnership, firm or entity in possession of a valid home improvement license from the County of Westchester and valid Certificate of Insurance, including proof of liability coverage for personal and property damage and worker's compensation.

CRITICAL ROOT ZONE (CRZ) – The area containing the minimum root area necessary for maintenance of tree health and stability. The *critical root zone* for all trees other than trees of significance is a circle with a radial distance of one (1) foot for every one (1) inch *DBH* with a minimum of eight (8) feet, and from the surface to a depth of three (3) feet. The *critical root zone* for a *tree of significance* is a circle with a radial distance of one and one-half (1.5) feet for every one (1) inch *DBH*, and from the surface to a depth of three (3) feet. A minimum of seventy-five percent (75%) of the *critical root zone* must remain undisturbed to provide for the health of the tree, except when a higher percentage is required as determined by a *Certified Arborist*.

CROWN – The upper portion of a tree which includes the scaffold limbs, branches, and leaves or needles.

DESIGNATED BUFFER AREA – An area, shown on an approved plan and designated by a Board of the Town, which is to remain in its natural state and where no *disturbance* shall occur.

DESIGNATED TREE – A tree which is specifically required to be planted or preserved in connection with any permit or other approval issued by the Town Board, Planning Board, Zoning Board of Appeals, Historic and Landmarks Preservation Board or any Officer of the Town.

DIAMETER AT BREAST HEIGHT (DBH) – The diameter of the tree *trunk* or sum of the trunks, measured at four and one-half (4.5) feet above natural grade level. The diameter may be calculated by using the following formula: $DBH = \text{circumference at 4.5 feet} \div 3.142$.

DISTURBANCE – For purposes of this Chapter, disturbance shall refer to all of the various activities from construction and development that cause *injury* to trees.

DRIP LINE – The outermost limit of the *canopy* of a tree as delineated by the perimeter of its branches and which, when extended perpendicularly to the ground, encloses the tree.

EXCESSIVE PRUNING – Removing one-fourth (25 percent) or greater, of the functioning leaf, stem or root area of a tree.

FALL ZONE – The area around a tree based on the topography, site conditions, wind and other factors that influence the natural direction where the entire tree or pieces of a tree, would land on a property.

FORESTRY OFFICER – An individual, who is a *Certified Arborist* that has expertise regarding trees, tree preservation, tree planting, and tree maintenance, appointed by the Town of Greenburgh Town Board to administer and enforce the provisions of this chapter.

GIRDLING – Any activity that injures the bark of a tree *trunk*, typically extending around much of the tree's circumference.

GRADING – The alteration of topography through the removal, movement or addition of soil, fill, or other material.

HAZARDOUS TREE – A tree identified as structurally defective which posed or poses an imminent risk or increased likelihood that all, or part, of the tree would fail resulting in a risk of personal injury, death or property damage in the *fall zone*.

INJURY – Any act which significantly weakens the tree, or its stems, *trunk* or roots, which may also include, but is not limited to, the following listed acts: *excessive pruning*; *girdling* or partial *girdling* of the tree *trunk*; excavation, compaction of the roots and/or raising or lowering the existing grade within the *critical root zone*, or poisoning in any manner (including, but not limited to, the addition of paint, brine, oil, gasoline, toxins, petroleum products, concrete or stucco mix, dirty water, etc., to the ground around a tree within the *critical root zone*), which list is not exclusive of other acts which may have deleterious effects.

INVASIVE SPECIES – A non-native species whose introduction does or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

LARGE CANOPY TREE – A tree expected to grow to a minimum of fifty (50) feet in height at maturity, with a *canopy* spread that consists of at least 1,600 square feet, under urban conditions.

LICENSED PROFESSIONAL TREE CARE COMPANY – A business which has a current and valid Westchester County Home Improvement license, is registered with the Tree Care Industry Association (TCIA) or the International Society of Arboriculture (ISA) and employs at least one (1) *Certified Arborist*, and which carries valid certificates of

insurance, including proof of liability coverage for personal and property damage and worker's compensation for work performed.

MEDIUM CANOPY TREE – A tree expected to grow to a maximum height of between thirty (30) and fifty (50) feet at maturity, with a *canopy* spread that consists of between 900 and 1,600 square feet, under urban conditions.

MID-MATURITY – The sum of the *caliper* of the replanted tree plus the *DBH* of the removed tree, divided by two.

NATURAL GRADE LEVEL – The surface of the ground prior to adding or removing soil, fill or other added material, within the *critical root zone*.

PERSON – A corporation, partnership, association or other legal entity, as well as an individual.

PUBLIC/STREET TREE – Any tree growing within the public street right-of-way, outside of private property, and any tree growing within the limits of a Town Park or on Town property.

REGULATED TREE – Any tree as specified within § 260-4.

REPLACEMENT PLANTINGS – Trees, shrubs, or other plant material that may be required by the *Approval Authority*, to mitigate the removal of a tree or trees on a site.

ROOT COLLAR – The base of a tree where the main roots and *trunk* meet. Also referred to as the root flare.

SCAFFOLD BRANCH – A large main branch that forms the main structure of the *crown*.

SHADE TREE – See “*Canopy Tree*.”

SITE PLAN – A drawing or set of drawings (e.g. property survey, plot plan, site plan, *grading* plan, demolition plan, site improvement plan, utility plan, landscape plan and/or remediation plan) prepared and stamped by a landscape architect, professional engineer or land surveyor licensed in the State of New York, which provides a title, project name, project address, parcel identification number(s) for the project site, and shows existing site conditions and proposed landscape improvements, including trees to be removed (marked with an “X”), relocated and retained, and which shall include the following minimum information: surveyed tree location, species, size, tree identification number, *drip line* area for all trees on the site (including trees located on any neighboring property which overhang the project site and all *public/street trees* located within fifty (50) feet of the project site); existing and proposed structures; existing and proposed paving, concrete, trenching or grade change located within any established *critical root zone*; existing and proposed utility pathways, surface and subsurface drainage and aeration systems, walls, tree wells, retaining walls and grade change barriers, both temporary and permanent; existing and proposed irrigation and lighting within the *drip line* of trees to be retained and

new trees to be planted, including all lines, valves, etc.; location of all proposed tree plantings and other landscaping; any significant features (e.g. wetlands, watercourses, rock outcroppings) located on the project site; details for tree protection and delineation of trees to be protected; a summary table identifying all new plantings to be installed, specifying their species (Latin and common name), *caliper* size and total quantity.

SMALL CANOPY TREE – A tree expected to grow to a maximum height of thirty (30) feet at maturity, with a *canopy* spread that consists of between 400 and 900 square feet, under urban conditions.

TOPPING – The indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough to assume the terminal role, which can lead to branch dieback, decay, and unstable sprout production from the cut ends, resulting in a potentially hazardous situation once the sprouts become large and heavy. Other names for topping include “heading,” “tipping,” “hat-racking,” and “rounding over.”

TOWN OF GREENBURGH OFFICIAL REPLACEMENT PLANTING LIST – A list of trees, shrubs and groundcovers approved and adopted by the Town Board that includes plant species approved for planting in the Town of Greenburgh to satisfy the requirements of this chapter and that which contains information on their characteristics of size, *canopy* spread, form, habit, and growing requirements.

TREE – Any self-supporting woody perennial plant of a species, having a main stem or *trunk* or multiple trunks with many branches, and at maturity normally attaining a *DBH* of three (3) inches or greater (9.5” in circumference) and a height of fifteen (15) feet or greater.

TREE OF SIGNIFICANCE – A tree with unique or noteworthy characteristics or intrinsic value, including, but not limited to, species, age, location, historical significance, ecological value, and/or aesthetics, as determined by the *Approval Authority*; or, a *large canopy tree* with a *DBH* of 36 inches (113” in circumference) or more, a *medium canopy tree* with a *DBH* of 24 inches (75” in circumference) or more, or a *small canopy tree* with a *DBH* of 12 inches (37.5” in circumference) or more.

TREE PROTECTION AND PRESERVATION PLAN – A drawing prepared and stamped by a landscape architect, professional engineer or land surveyor licensed in the State of New York, which provides accurate *trunk* locations, *drip line* areas, and *critical root zones* of all trees or groups of trees to be preserved on a project site. In addition, the plan must accurately identify the *DBH* and correct species of each tree, and clearly indicate the *tree protection zone* to be enclosed with the specified tree protection fencing as a bold dashed line.

TREE PROTECTION ZONE (TPZ) – The area of temporary fenced tree enclosure reserved around a tree or group of trees in which no *disturbance*, *grading*, access, stockpiling or other deleterious activity shall occur, unless otherwise approved in writing by the *Approval Authority*.

TREE PRUNING – The removal or reduction of certain plant parts that are not required or are no longer effective, in order to retain or improve the tree’s health, natural habit, balance, stature, value and contribution to the landscape design.

TREE REMOVAL PERMIT – A permit issued by the *Approval Authority* under this chapter.

TRUNK – The main stem of a tree, beginning at the *root collar* and ending at the lowest main *scaffold branch*.

UNDEVELOPED FORESTED PROPERTY – A property: (1) on which does not presently exist, or has not existed for any time within the fifteen years prior to the submission of a tree removal permit application, a structure, and, (2) on which there is a tree canopy coverage of at least 50%.

§ 3. Severability.

If any clause, sentence, paragraph, section or part of this ordinance or the application thereof to any *person* or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other *person* or circumstances and to this end the provisions of each section of this law are hereby declared to be severable.

§ 4. Supersession.

Pursuant to Municipal Home Rule Law § 22, this local law is intended to supersede the present provisions of Chapter 260.

§ 5. Effective Date.

This law shall take effect 60 days after filing in the office of the Secretary of the State of New York in accordance with the provisions of the Municipal Home Rule Law.