

Village of Scarsdale



Memorandum

Village Manager's Office

To: Stephen M. Pappalardo, Village Manager
From: Ingrid M. Richards, Assistant Village Manager *IMR*
Date: July 31, 2017
Re: **Proposed Amendments to Chapter 281: Trees, Grass, Bush and Weeds**

Purpose and Introduction

The Friend of Scarsdale Parks (FOSP), Conservation Advisory Council (CAC) and previously recommended a number of amendments to Chapter 281: Trees, Grass, Bush and Weeds in the Village of Scarsdale Code ("Chapter 281"). The amendments, ultimately agreed to by a working group including Village staff, would preserve existing trees, increase the number of trees planted, as well as, provide additional funding for plantings in the Right of Way (ROW) and Village Parks. This memo outlines the process that was instituted to review the suggested amendments to Chapter 281, the modifications that were considered, the proposed changes that were ultimately agreed to and the effect of the law.

Background

In order to review certain FOSP and CAC draft amendments to Chapter 281, the Land Use Committee and Municipal Services Committee of the Board of Trustees convened on June 14, 2016 and requested that a working group (the "Group"), comprised of representatives from the Village Staff, FOSP and CAC, be formed to further review the law and jointly agree on amendments before presenting to the Board of Trustees for its further consideration.

Members of the Group included Trustee Deborah Pekarek, Board liaison to the CAC and FOSP; Dan Hochvert and Madelaine Eppenstein representing the FOSP; Lee Fischman and Joan Weissman representing the CAC and Elizabeth Marrinan, Village Planner; Samantha Garrison, Assistant Village Attorney; Cameron McLeod, Assistant to the Village Planner and myself representing the Village Staff. Additionally, Mr. Goessl, Village Engineer and Ron Schulhof, representing the CAC joined the working group for subsequent meetings.

Meetings were held on November 17, 2016, January 12, 2017, March 2, 2017, May 3, 2017 and June 22, 2017 to discuss the ten (10) specific areas enumerated below:

1. the legislative intent;
2. the requirements of the tree removal permit;

3. modification to the Tree Expert definition;
4. role of Architectural Review Board and other Land Use Boards as it relates to the location of planting replacement trees;
5. determining when and to whom the FOSP guidance should be distributed;
6. modification to the Invasive Species definition;
7. modification to the Protected Tree definition;
8. increase the required replacement tree from three (3) inches DBH to four (4) inches DBH;
9. require neighbor notice, display of tree protection plan and on-site posting of notices when trees are removed;
10. require soil and erosion controls in accordance with New York State Department of Environmental Conservation (NYSDEC) Best Management Practices.

Recommended modifications to Chapter 281: Trees, Grass, Bush and Weeds

During the meetings the Group determined that a number of modifications should be made to Chapter 281 to preserve and enhance trees in the Village of Scarsdale.

First and foremost §281-1. *Legislative Findings and Intent* should be expanded to clarify the benefits of trees to our ecosystem and reference the deleterious effects of the destruction of trees on our environment and health.

Second, §281-2. *Definitions* should be amended as follows:

- Invasive Species: the reference to the Invasive Plant Atlas of New England list should be removed and replaced with the prohibited and regulated invasive plant lists of the NYSDEC;
- Protected Tree: the list of trees included in the definition should be removed and replaced with a list of protected trees to be created and maintained by the Village Engineer's Department based on NYS DEC Endangered List;
- Replacement Tree: requires that the tree be native to the Northeast United States; and
- Tree Expert: expanded to include landscape architect as a tree expert.

Third, §281-3. *Activities permitted as of right on nonpublic property (A)*, the Group agreed that there are a number of trees that will never reach six (6) inch DBH, resulting in valuable trees potentially being removed without a tree permit. As such, it is recommended that language requiring tree permits for a limited number of small caliper native trees that are three (3) inches or greater be added. The trees included on the list are as follows: Hawthorn, Crabapple, Redbud, Mountain Ash, Amelanchier (Serviceberry) and Birch.

Fourth, § 281-4. *Tree removal permit* section is modified to require a tree permit for any tree that exceeds six (6) inches DBH. The existing law requires a tree permit for the third tree that exceeds six (6) inches DBH per lot per 12 months allowing for two trees to be removed as-of-right. This section is further modified to require a tree permit for the aforementioned small caliper trees listed in §281-3. Additionally, § 281-4 (E) has been modified to add a requirement that the Village Engineer maintain a written record of all tree removals regardless of cause of removal.

Fifth, the proposed law adds a new § 281-5. *Replacement Trees*, to include new language that states if a tree with a DBH of 24 inches is removed a replacement tree is required. The existing law requires a replacement tree for trees with a 36 inch DBH. This new section also adds a new requirement that if permitted trees removed within a 12 month period have an aggregate DBH of 24 inches or greater, a replacement tree shall be planted for every 24 inches of DBH removed. Additionally, in paragraph (C) of this section the Tree Preservation Fund is activated by requiring that fees be added to the master fee schedule so the Village Engineer shall charge a fee when a tree is removed and the planting of a replacement tree is not feasible.

Sixth, § 281-6. *Protected Trees*, the law as proposed states that protected trees may only be removed if the tree is deemed dead, dying or hazardous as determined by a tree expert. Additionally, a hardship provision is included in this section to allow for the Village Engineer to make a determination that if it is imprudent for the tree to remain due to factors that are uncontrollable, the tree may be removed.

Seventh, § 281- 14. *Unlawful to allow infestations*, now includes a provision precluding the planting of invasive plants and vines as listed on the Prohibited and Regulated Invasive Species plant list of NYSDEC.

Finally, § 281-25. *When inventory, plans and bond agreement are required* is modified to ensure subdivision or site plan applications are accompanied by a tree inventory plan prepared by a tree expert or surveyor. Additionally, allowing the Planning Board the discretion to require an inventory of trees having a diameter of ten (10) inches DBH or more, has been removed. Lastly, a tree replacement plan must be prepared by a tree expert as defined by the law.

Effect of the proposed changes to Chapter 281

The proposed law significantly increases the number of replacement trees required under Chapter 281. The requirement for a replacement tree has been decreased from 36 inch DBH to 24 inch DBH and further requires that if a property owner removes a number of permitted trees that in the aggregate total 24 inch DBH or more, a replacement tree would be required for each 24 inches removed. The chart below illustrates the number of replacement trees required under the existing law from January 1, 2017 to July 14, 2017 and corresponding numbers if the proposed law were in effect.

2017 Replacement Trees 1/1/17- 7/14/17		
	DBH	# of replacement Trees per requirement
Existing Law	36 inches	25
Proposed Law	24 inches	88
Proposed Law	aggregate - 24 inches	112

Conclusion

Please accept these recommended amendments to Chapter 281 as a collaborative effort among Village Staff, FOSP and the CAC. Much compromise was afforded by all parties to arrive at the draft law attached to this memo which we believe will be an effective tool toward preserving and enhancing trees in the Village of Scarsdale.

Cc: Elizabeth Marrinan, Village Planner
David Goessl, Village Engineer
Samantha Garrison, Deputy Village Attorney

INTRODUCTORY LOCAL LAW # ____ OF 2017
A LOCAL LAW AMENDING CHAPTER 281 OF THE SCARSDALE VILLAGE CODE
ENTITLED TREES, GRASS, BRUSH AND WEEDS

BE IT ENACTED by the Board of Trustees of the Village of Scarsdale as follows:

ARTICLE I
Trees

§ 281-1. Legislative findings and intent.

The Village of Scarsdale finds that trees within the Village provide an important contribution to the health, safety, aesthetics and general welfare of Scarsdale residents and the community at large. The preservation and maintenance of trees is necessary to protect the health, safety, environment, ecosystems and general welfare of the inhabitants of the Village of Scarsdale. Trees provide necessary shade, green space and aesthetic appeal, enhance green space, improve air quality, reduce energy use and atmospheric carbon dioxide, provide and promote habitat for wildlife, impede soil erosion, aid water absorption, inhibit excess runoff and flooding, provide screening, offer a natural barrier to noise, and provide other environmental benefits and generally enhance the quality of life within the Village. These social, economic, and ecological benefits often increase as trees mature and the Village community's investment in trees has accrued over many years. This investment can be rapidly lost and is not easily nor quickly replaced due to the long length of time for a tree to mature. The destruction of and damage to of trees and the indiscriminate and excessive cutting of trees can create cause barren and unsightly conditions, create as well as, surface drainage problems, increase municipal costs to control drainage, impair the value of real property and adversely affect the environment, health and the character of the community. This article seeks to address these conditions and promote the preservation of trees within the Village.

§ 281-2. Definitions.

Terms as used in this chapter shall have the meanings:

DBH - The diameter of a tree trunk measured at 54 inches above the ground on the uphill side.

DISTRIBUTION LINE - An electric line having a voltage of less than 69 kilovolts.

EMERGENCY - A serious situation or occurrence that happens unexpectedly and demands immediate action.

ENTITY - Any corporation, limited liability company, partnership, limited partnership or other ~~nonmunicipal~~ non-municipal enterprise recognized by the State of New York or its agents and contractors.

HERITAGE TREE - A tree designated by the Village with the consent of the owner upon a finding that the tree is unique and/or of importance to the community as set forth in § 281-6.

INJURY TO TREES - Any action, during the course of permitted or nonpermitted work, that causes significant damage to a tree that causes or is likely to cause death of the tree.

INVASIVE SPECIES - A nonnative species that adversely affects the habitats it invades economically, environmentally or ecologically and is listed as a prohibited species in the Prohibited and Regulated Invasive Species plant lists of the New York State Department of Environmental Conservation. Invasive Plant Atlas of New England (IPANE), as amended.

LANDSCAPE PLAN - A design for the exterior landscape of a property that includes the size, type and location of trees, shrubs and other natural elements and may include grading, tree removal and tree preservation measures which is reviewed and approved by a land use board.

LAND USE BOARDS - Independent bodies that make decisions in regard to land use in the Village under the enabling authority given by the State of New York, county and/or local law. These include the Board of Architectural Review (BAR), the Zoning Board of Appeals (ZBA) and the Planning Board.

NONPUBLIC PROPERTY - Any lands not owned by the Village of Scarsdale or any other governmental entity.

PROTECTED TREE - A tree designated as protected in accordance with the Protected Tree List maintained by the Village, which shall include but is not limited to those trees listed in the Endangered Protected Native Plants list of the New York State Department of Environmental Conservation, as amended from time to time, and heritage trees. The Protected Tree List shall be maintained by the Engineering Department. ~~this article.~~ The following trees are protected:

A. ~~The American elm.~~

B. ~~The American beech tree.~~

C. ~~Heritage trees.~~

PUBLIC PROPERTY - Lands owned by the Village of Scarsdale, which includes rights-of-way (ROW), parks, open space and Village facilities.

REPLACEMENT TREE - Any tree planted under the provisions of this chapter or required by a decision of a land use board. Replacement trees must be native to the Northeast United States, excluding invasive species, and at least shall not be an invasive species or smaller than three inches in diameter DBH at the time of planting, unless specifically approved as part of a tree replacement plan.

RIGHT-OF-WAY (ROW) - Generally, the space owned by the Village extending approximately 13 feet from each curblin, but may include specific lands under an agreement or definition of law.

TREE - Any woody plant of a species which grows at maturity to an overall height of 10 feet or more, has a single trunk or multiple trunks which are, in combination, a sum of six inches DBH.

TREE EXPERT - An ISA-certified arborist, licensed landscape architect, or other professional certified by a recognized program of higher education or governmental agency as a tree expert.

TREE PRESERVATION FUND - A fund established by the Village of Scarsdale to receive payments pursuant to this chapter, as well as voluntary donations to be used in accordance with this chapter or to augment the planting of public trees.

TREE REMOVAL PERMIT - A permit issued by the Village Engineer in conformance with an application submitted by an applicant and approved by the Village Engineer.

VILLAGE ENGINEER - A person employed by the Village of Scarsdale, certified and licensed by the State of New York as a professional engineer or licensed architect, or his or her designee, with responsibilities that include reviewing plans for various projects on public and private land within the jurisdiction of the Village of Scarsdale.

§ 281-3. Activities permitted as of right on nonpublic property.

A property owner may remove a tree(s) on nonpublic property as of right, provided any of the following:

A. The tree(s) to be removed are six inches DBH or less, except the following small caliper native trees may only be removed without a permit provided that they are three inches DBH or less:

(1) Hawthorn, *Crataegus* species and its cultivars

(2) Crabapple, *Malus*

(3) Redbud, *Cercis*

(4) Mountain Ash, *Sorbus Americana*

(5) Amelanchier (Serviceberry), *A. arborea* and *A. laevis* hybrid and cultivars

(6) Birch, *Betula*

~~B. Removal of up to two trees exceeding six inches DBH per lot per twelve month period, excluding protected trees. A removed tree that is 36 inches DBH or greater must be replaced with a replacement tree.~~

BC. The tree is removed under an actual or ongoing emergency when such tree removal is necessary for the protection and preservation of life or property, including adjoining parcels.

CD. The tree is dead, dying, hazardous, or diseased as determined by a tree expert.

DE. The tree is an invasive species as defined herein.

§ 281-4. Tree removal permit.

A. The following tree removal activity requires a tree removal permit:

- (1) The removal of one ~~three~~ or more trees greater than exceeding six inches DBH ~~per lot per 12 months, except as provided under § 281-3C, D and/or E.~~
- (2) The removal of one or more small caliper native trees as identified under § 281-3(A).
- (~~23~~) Trees identified to be removed or protected as a result of a land use board determination.
- (~~34~~) Removal of replacement tree(s) six inches or less DBH that are planted as a result of a land use board determination or pursuant to § 281-10.
- (~~45~~) Removal of tree(s) determined to be preserved by a land use board for at least two growing seasons after the issuance of a certificate of occupancy or land use board approval.

B. In making a determination to grant or grant with conditions a permit under this article for the removal of any tree, the Village Engineer's consideration shall include, but is not limited to, the following:

- (1) Whether the location of the tree endangers the health, safety or welfare of the general public, the property owner or an adjoining property owner.
- (2) Whether the tree interferes with a permitted use of the property and/or is specifically identified for removal in a wetland permit, special use permit, subdivision plan, site plan or Board of Architectural Review approved landscape plan.
- (3) Whether the location of the tree interferes with a proposed permitted construction or alteration on the property and the construction or alteration cannot be reasonably adjusted to accommodate such tree.
- (4) Whether the location of the tree prevents compliance with state, county or local laws or regulations for visual obstructions, sight lines, driveways or intersections.

- (5) Whether the tree, due to advanced age, disease, blight, infestation, storm damage, accident or other condition, causes undue hardship for the property owner to maintain such tree.
 - (6) Whether the tree is located within three feet of an existing sidewalk, driveway or private roadway or if the tree is located within 10 feet of any existing dry well or other subsurface improvement or within 10 feet of any existing permanent structure or improvement.
 - (7) The number of trees for which a tree removal permit is being sought.
 - (8) The number of trees, if any, removed from the property during the preceding five years (other than trees removed pursuant to § 281-3A, B, C, or D ~~or E~~).
- C. The determination of the Village Engineer denying the grant of a permit application shall be in writing and set forth the basis for such decision, which decision may be appealed to the Planning Board.
- D. Notwithstanding any other provision of this chapter, any property owner, developer or person who has applied for and received a permit involving an approved subdivision, approved site plan, wetland permit, special permit, or any permit that requires the removal of tree(s) on any nonpublic property shall, in addition to strict compliance with any terms of such approved subdivision, approved site plan, wetland permit, special permits, or any permit that requires the removal of tree(s), make an application to the Village Engineer for a tree removal permit. There shall be no site disturbance, and the status quo shall be maintained until such time as a tree removal permit is granted or denied and the appeal process is completed. The Village Engineer may grant, grant with conditions, or deny such application for a tree removal permit on such terms and conditions as he or she may prescribe, it being understood that there must be full compliance with any approved subdivision, approved site plan, wetland permit, special permit or other development approval required by the land use boards. In no event shall a tree removal permit be issued for the removal of any tree specifically designated to be saved by the Planning Board, Board of Appeals or Board of Architectural Review, unless said tree is determined to be dead, dying, diseased or hazardous to life or property or as subsequently approved by a land use board.
- ~~E. The Village Engineer may require the planting of one or more replacement trees as a condition to the granting of any tree removal permit. In addition, the Village Engineer shall have the authority to require replacement trees in kind to be planted or where existing trees are so large and mature that it is not practical to replace such trees in kind, to order the planting of multiple trees and/or the payment to the Tree Preservation Fund. In the event that the existing conditions on a lot make the planting of replacement trees not feasible, the applicant may be required to make a payment to the Tree Preservation Fund in an amount that would reimburse the Village for the cost of purchasing and planting any such replacement tree or trees.~~

EF. Applications.

- (1) All applications for permits shall be made in writing upon forms prescribed by the Village Engineer.
- (2) The Village Engineer may require the applicant to submit plans showing existing and proposed contours at two-foot intervals on a map or plan at a scale no smaller than one inch equals 40 feet; existing trees, specifying types and sizes; trees to be removed and the reasons for removing said trees. The plans must detail all replacement trees and specify the planting location, size, species and type.
- (3) The Village Engineer may require additional information in plans that include the design for ~~of~~ all tree protection measures, including but not limited to protective fencing, tree wells and any other appurtenance that is deemed to be pertinent in reviewing an application.
- (4) ~~Where extensive tree removal is planned as part of a tree removal permit, T~~he Village Engineer may require the applicant to pay for the retention, by the Village, of a tree expert, as defined herein, to supervise and ensure that any tree removal is carried out in compliance with any permit of approved land use plan. ~~the orderly removals in a manner that assures compliance with any permit or approved plans.~~
- (5) An applicant may be required to furnish the Village with a performance bond or a cash deposit in an amount determined by the Village Engineer in a form to be approved by the Village Attorney sufficient to cover 100% of the planting and restoration work to be completed after the removal of any tree pursuant to plans that are required to accompany all applications. Cash shall be deposited in a trust account as established by the Village Treasurer. The performance bond or cash deposit shall remain in effect for a period of two growing seasons after the issuance of a certificate of occupancy (CO), or where a CO is not required after final inspection and approval by the Village Engineer.
- (6) The Village Engineer, within 390 days from the date an application is submitted in final form, shall issue a permit or deny the application, unless the parties agree to extend the time for the Village Engineer to render a determination.
- (7) The Village Engineer may issue a stop-work order against any approved tree removal permit if the work performed is not proceeding in accordance with the requirements of the permit or in an orderly and diligent manner.
- (8) An application fee shall be set by resolution of the Village Board in an amount that would cover Village costs for the administration and enforcement of this chapter. The Village Manager, as appropriate, shall recommend to the Village Board fees under this chapter.

(9) The Village Engineer shall maintain a written record of all tree removal permits.

§ 281-5. Replacement trees.

A. The following trees removed pursuant to § 281-4 shall be replaced with a replacement tree:

- (1) A tree removed that is 24 inches DBH or greater.
- (2) Permitted trees removed within a 12-month period having an aggregate DBH of 24 inches or greater. A replacement tree shall be planted for every 24 inches of DBH removed within a 12-month period.

B. In addition to the replacement tree requirements specified above, the Village Engineer may require the planting of one or more replacement trees as a condition to the granting of any tree removal permit. In addition, the Village Engineer shall have the authority to require replacement trees of comparable size or species to be planted or where existing trees are so large and mature that it is not practical to replace such trees of comparable size, to order the planting of multiple trees and/or the payment to the Tree Preservation Fund, the amount of which shall be determined by the Village Board in its annual fees and charges schedule.

C. In the event that the existing conditions on a lot make the planting of replacement trees not feasible, the applicant shall be required to make a payment to the Tree Preservation Fund in an amount that would reimburse the Village for the cost of purchasing, planting and maintaining any such replacement tree(s), the amount of which shall be determined by the Village Board in its annual fees and charges schedule.

§ 281-65. Protected trees.

Protected Trees may not be removed unless the tree is dead, dying, hazardous, or diseased as determined by a tree expert and certified in writing. Notwithstanding this provision, where a protected tree, excluding protected trees located within any of the required setback areas, is determined by the Village Engineer to create a hardship, it may be removed. the Village Engineer determines, because of their condition, that they are a danger to persons or property or that they are diseased and cannot be saved.

§ 281-76. Heritage trees.

- A. Upon the written request and consent by any property owner, the Board of Architectural Review may designate a tree as a "heritage tree."
- B. A tree may be designated as a heritage tree upon a finding that it is unique and of importance to the community. The following factors may be considered by the Board of Architectural Review when considering designating a heritage tree:

- (1) It is an outstanding specimen of a desirable species.
 - (2) It is one of the largest or oldest trees in Scarsdale.
 - (3) It possesses distinctive form, size, age, location, and/or historical significance.
- C. After Board of Architectural Review approval of a heritage tree designation, the Village Engineer shall notify the property owner(s) in writing. A listing of trees so designated, including the specific locations thereof, shall be kept by the Building Department.
- D. Once designated, a heritage tree shall be subject to the provisions of this article unless removed from the list of heritage trees by action of the Board of Architectural Review. At its discretion †The Board of Architectural Review may remove a tree from the list upon written request by the property owner.

§ 281-87. Tree expert.

The Village may employ or retain a tree expert to advise the Village in regard to the planting, growing, pruning, removal or preservation of any tree on public and nonpublic property.

§ 281-98. Restoration and replacement.

- A. All persons who remove trees or cause trees to be removed with or without a tree removal permit shall restore the area by backfilling all holes and by creating an acceptable grade and covering. Any tree damaged for any reason during construction or development of a property, or removed in violation of an approved subdivision plan, site plan, special permit, wetland permit or landscape plan, shall forfeit all or a portion of any escrow deposit or bond in an amount determined by the Village Engineer. Minor tree damage shall be treated in accordance with accepted tree surgery and best practices.
- B. Tree stumps shall be removed except where trees are removed pursuant to § 281-3 or the Village Engineer determines that the stumps are to be left for aesthetic purposes, to prevent soil erosion, or for other reasons. After the replacement of any tree, removal of all debris in the disturbed area shall be made immediately. The property where such planting is done must be left in a neat and orderly condition in accordance with good and acceptable planting and tree surgery practice.
- C. All tree planting, tree dressing and associated restoration work must be substantially completed within one year from the date of issuance of any tree removal permit not associated with a building permit, except that the tree removal permit may be extended by the Village Engineer for a period not to exceed six months. Under all circumstances the performance bond or cash escrow held by the Village shall continue in full force and effect until there has been full compliance and approval by the Village Engineer of all restoration work. In the event that the planting and restoration work is not substantially completed within one year of the date of issuance of a permit, and no extension has been granted, the

Village Engineer shall consider the work and permit to be abandoned and declare the performance bond and/or the escrow deposit in default, and the proceeds from the bond and/or cash deposit shall be transferred to the Tree Preservation Fund.

- D. All trees planted pursuant to this article ~~newly planted trees~~ which fail to survive two growing seasons shall be replaced by the permit holder at the expense of the permit holder. Said replacement shall be within the longer of 60 days following written notice from the Village Engineer or the period of time as may be specified in such notice. Should the permit holder fail to timely replace the trees, the Village Engineer shall serve a court appearance ticket and/or declare the bond and/or escrow deposit in default and apply the proceeds to the Tree Preservation Fund.

§ 281-~~109~~. Certificate of occupancy.

A final certificate of occupancy shall ~~not~~ be issued by the Building Inspector ~~until~~ only after all tree planting, tree dressing and associated restoration is completed to the satisfaction of the Village Engineer, except that between October 31 and April 1, the permit holder may obtain a temporary certificate of occupancy. In the case where a temporary certificate of occupancy is issued, all planting and restoration work in this instance must be completed to the satisfaction of the Village Engineer on or before the first day of the following May. The escrow cash deposit and performance bond shall continue in full force and effect until the planting and restoration work has been completed and the planting has survived two full growing seasons. Should the permit holder fail to complete the restoration work on or before May 1, the Village Engineer shall declare said performance bond or escrow in default and apply the proceeds from the bond or escrow to the Tree Preservation Fund.

§ 281-~~1110~~. Enforcement; penalties for offenses.

- A. The terms of this chapter shall be enforced by the Village Engineer and the Building Department, except where such enforcement may be vested in the laws of the State of New York.
- B. Any person violating any of the provisions of this article shall be guilty of a violation and shall be fined not less than \$250 or more than \$1,000 for the first two trees. Thereafter, not less than \$500 or more than \$2,500 for each additional tree. No building, demolition, or excavation permit may be issued, and if previously issued shall be revoked, until such violation is cured in accordance with § 281-8 herein.
- C. In addition thereto, any person violating any of the provisions of this article shall replace each tree injured, removed, killed or destroyed in accordance with the provisions of § 281-4E.

ARTICLE II
Distribution Lines

§ 281-1244. Distribution lines, rights-of-way.

- A. Legislative findings and intent. The Village of Scarsdale wishes to promote the reliable delivery by public utilities of electric power to residents and businesses within the Village. The Village recognizes that tree limbs may interrupt such reliable delivery if they become entangled with electric lines and therefore public utilities must, from time to time, cut and/or remove trees. The Village also wishes to recognize and preserve the benefits of trees to the community, including, without limitation, shade and aesthetic appeal, enhancing green space, improving air quality, reducing energy use and atmospheric carbon dioxide, providing and promoting habitat for wildlife, impeding soil erosion, aiding water absorption, inhibiting excess runoff and flooding, providing screening, offering a natural barrier to noise, providing other environmental benefits and general enhancing the quality of life within the Village. ~~flood mitigation, water purification, reduced soil erosion, removal of carbon dioxide from the air, providing protection from the elements and reduced use of fossil fuels for heating and air conditioning and preservation of neighborhood character. Removal of trees may lead to soil erosion, stormwater runoff and related drainage problems, which, if not regulated locally, Removal of trees, if not regulated locally,~~ would be deleterious to the environment and adversely impact all property in the Village.
- B. Any tree work in the Village right-of-way by a public utility, or its agent, including trimming and/or removal of trees must comply with nationally recognized standards and, further, that when tree removal is necessary, reasonable efforts are to be made to mitigate the loss of trees and any resulting threat by such removal by replanting, or such other actions that are necessary to protect the public health, safety, environment and general welfare.
- C. Utilities or their agents responsible for maintaining ROWs in the Village shall follow the tree maintenance practices for utilities established by the National Arbor Day Foundation, as amended from time to time, unless otherwise authorized in writing by a tree expert under such terms and conditions as may be specified. Nothing in this article prevents a public utility from contracting with a private entity to perform tree maintenance, as long as such tree maintenance conforms to the standards established by the National Arbor Day Foundation and provisions of this Article II.
- D. Except for tree pruning and trimming permitted by Subsection B above, no utility or its agents or contractors shall cut, top or remove a tree on a Village ROW, unless such tree poses a danger to a distribution line. A certification by a tree expert that such tree(s) are diseased or dying or, with respect to a healthy tree, such tree is so entangled with a distribution line that pruning and maintenance practices cannot reasonably be expected to prevent such tree from falling on or otherwise interfering with the distribution line is to be filed with the Village Engineer before any work takes place. Notwithstanding any provisions of this Article II, an entity may trim, top or remove a tree on a ROW if it has

fallen on a distribution line or, in the judgment of the utility, is in imminent danger of doing so.

- E. Except for tree pruning and trimming maintenance practices permitted by this Article II, any public utility or other entity removing a tree on a ROW or trimming to such a degree that would constitute removal, including if done on an emergency basis, shall replant a replacement tree, as defined herein, for each such tree removed and take such action as shall be determined by the utility's consulting tree expert so that no adverse environmental effects, including, but not limited to, drainage and soil erosion, impact the Village or adjacent property owners. ~~All replacement trees shall be native trees for this region as designated either by the County of Westchester Department of Planning, or in the New York City Parks Department "Native Species Planting Guide for New York City and Vicinity," or in Cullina, "Native Trees, Shrubs and Vines."~~

§ 281-1312. Enforcement penalties: Utilities and ROWs.

- A. The Village Engineer may issue such regulations and forms as it deems appropriate for the administration of this Article II and may issue stop-work orders for violations.
- B. If any provision of this article is violated by any utility or its agent, the Village may, in any court of competent jurisdiction, seek injunctive relief restraining any violation of this article and/or compel the restoration described under the violation. Any violation of this article shall be punishable by a fine in the amounts set forth in § 281-10.

ARTICLE III

Infestations, Poisonous, Harmful Weeds and Plants

§ 281-1413. Unlawful to allow infestations.

- A. It shall be unlawful for the owner of any land in the Village to maintain or permit to remain thereon harmful flora or fauna which is likely to cause destruction of or damage to trees or shrubs or create a potential hazard or a public nuisance, including prohibited species listed on the Prohibited and Regulated Invasive Species plant lists of the New York State Department of Environmental Conservation.
- B. It shall also be unlawful for the owner of any land in the Village to maintain or permit to remain thereon any poisonous or harmful weed or plant that is likely to spread to other properties or become a public nuisance.

§ 281-1514. Duty of owners to correct.

It shall be the duty of the owner of any land in the Village containing harmful flora, fauna or poisonous or harmful weed or plant which violates § 281-13 to destroy or cause to be destroyed such harmful flora or fauna or poisonous or harmful weed or plant.

§ 281-1615. Action by Village.

In case any owner of land in the Village fails to comply with the provisions of this article, the Village Engineer shall issue a notice of correction by regular mail or in person, directing such owner(s) to comply with the provisions of this article.

§ 281-1716. Penalties for offenses.

Any person committing an offense against any provision of this Article III shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

ARTICLE IV

Planting and Protection of Trees, Shrubs and Plants in Public Places

§ 281-17. Findings and purpose.

~~The preservation and protection of trees, shrubs and plants is necessary to protect the health, safety and general welfare of the Village of Scarsdale. Trees, shrubs and plants provide necessary shade, green space and aesthetic appeal, impede soil erosion, and aid water absorption, provide other environmental benefits and generally enhance the quality of life within the Village.~~

§ 281-18. Planting in public places.

No person shall plant any tree, shrub or plant that may create a traffic hazard or other visual obstruction, pursuant to Chapter 294 of this Code,[1] within limits of any public ROW, park or other public place, without first securing a written permit from the Village Engineer or license agreement from the Village and complying with the following conditions and requirements: the permit or license shall be granted only upon a determination by the Village Engineer after consulting with the Director of Public Works that such planting does not interfere with the use of such public ROW, park or other public place and that such planting will enhance the beauty and appearance of the public ROW, park or other public place and the surrounding area.

- A. Trees planted within the limits of any public ROW, park or other public place shall be of a quality and species approved by the Village Engineer and shall be planted at least 30 feet apart unless otherwise authorized by the Village Engineer. Each such tree shall measure not less than three inches DBH measured at 4.5 feet from the ground.
- B. Should any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to any such permit, in the opinion of the Village Engineer, interfere at any time with the use of such public ROW, park or other public place by the public or detract from the beauty and appearance of the public ROW, park or other public place or the surrounding area, the Village Engineer shall mail a notice in writing to the permittee or his or her successor in ownership of the abutting premises to remove such tree, shrub or

plant and to restore such public ROW, park or other public place to its original condition within 15 days of the mailing of the notice. If such permittee or owner shall fail to comply with such notice, the Village Engineer may cause the tree, shrub or plant to be removed, and the public ROW, park or other public place to be restored to its original condition at the expense of such permittee or owner. Any cost incurred by the Village in the performance of such work involving the removal of any such tree, plant or shrub in any public ROW, park or other public place shall be paid by such permittee or owner, upon notice from the Village of Scarsdale, in full within 30 days of the date of such notice. In the event of nonpayment by the owner of the property or building, such costs will be assessed as a lien on the property.

- C. Any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to such a permit or license agreement shall be maintained by the owner of the abutting premises, and the Village shall not be responsible for any damage caused to or by such tree, shrub or plant.

§ 281-19. Removal, cutting and trimming in public places.

No person shall remove, kill, cut, break or trim any tree or shrub in any public ROW, park or other public place in the Village or remove any device set for the protection of any such tree or shrub, without first securing a written permit from the Village Engineer and complying with such specifications as the Village Engineer may prescribe.

§ 281-20. Interference in public places.

No person shall, without first securing a written permit from the Village Engineer, cause any wire or insulator or any device for the holding of any electric wire to be attached to any tree in any public ROW, park or other public place or cause any wire or other conductor charged with electricity to come in contact with any such tree or place or maintain any pole or post in such a manner as to interfere with any tree or shrub in any public ROW, park or other public place.

§ 281-21. Fastening animals and signs in public places.

No person shall fasten or tie any animal to or attach any sign, bill, card, notice or advertisement to any tree or shrub in any public ROW, park or other public place or allow any animal under his or her control to injure any such tree or shrub.

§ 281-22. Obstructing nutrients to roots in public places.

No person shall place or maintain on the ground in any public ROW, park or other public place any stone, excess soil or other substance in such manner as may obstruct the free access of air or water to the roots of any tree therein without first securing a written permit from the Village Engineer.

§ 281-23. Deleterious substances about roots in public places.

No person shall cause any brine, oil, gas, gasoline, liquid dye or other substance deleterious to tree life to pass onto or into the soil about the roots of any tree in any public ROW, park or other public place.

§ 281-24. Penalties for offenses.

Any person, or ~~entity firm or corporation~~ violating any of the provisions of this Article IV shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine in amounts set forth in § 281-10 with respect to trees and as provided in § 281-16 for all other vegetation.

ARTICLE V
Land Use Boards

§ 281-25. When inventory, plans and bond agreements required.

- A. Applications for subdivision or site plan approval or for activities in a freshwater wetland controlled area before the Planning Board; for special permits for tennis courts, swimming pools and other buildings before the Board of Appeals; and for permit approval before the Board of Architectural Review shall be accompanied by:
- (1) An tree inventory plan, prepared by a tree expert or surveyor of all trees on the property having a DBH trunk diameter of four inches or more. ~~at a point 54 inches above the ground, except that in applications for site plan approval, wetland permits or for preliminary approval for subdivision, t~~The Planning Board may permit inventories showing only trees having a diameter of 10 inches or more or may defer the inventory requirement in subdivision applications for which no development is proposed or for which site plan approval is also required.
 - (2) A tree preservation plan showing trees which are to be preserved. Methods for tree preservation in areas affected by construction activities shall meet standards set by Westchester County Best Management Practices Manual.
 - (3) A tree removal and replacement plan prepared by a tree expert, if required.
 - (4) An agreement by the applicant to post a performance bond, cash deposit or other surety where required under this article, in an amount to be determined by the Village Engineer and approved as to form by the Village Attorney, to assure replacement of trees shown on preservation or replacement plans which were not fully protected or properly planted as required under this article and which do not survive for two complete growing seasons after completion of construction and that it not be released

until after the foliage is out at the start of the third growing season, at which time staff would be able to verify that the tree(s) had survived.

- B. No certificate of occupancy shall be issued for new construction unless the applicant meets all conditions for providing a tree inventory, a tree preservation plan, a replacement plan and the posting of a bond and/or cash deposit, where required.

EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

Underline means addition.

~~Strikethrough means delete.~~