

Local Law 5 of 2006

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 State Street, Albany NY 12231

Village of Muttontown

Local Law 5 of 2006

A local law amending Chapter 172 (“Trees”), sections 172-1, 172-2, 172-3, 172-4, 172-5, 172-6, 172-7, 172-8 and 172-9; of the Code of Muttontown to regulate the removal, substantial alteration or destruction of trees and other protected vegetation.

Be it enacted by the Board of Trustees of the Village of Muttontown as follows:

Chapter 172: TREES

[HISTORY: Adopted by the Board of Trustees of the Village of Muttontown 9-11-2000 by L.L. No. 3-2000. Amendments noted where applicable.]

GENERAL REFERENCES

Advertising and bill posting — See Ch. 4.
Brush, grass and weeds — See Ch. 31.
Environmental quality review — See Ch. 52.
Excavation and grading — See Ch. 62.
Site plan review — See Ch. 144.
Subdivision of land — See Ch. 158.

§ 172-1. Findings; purpose.

A. The Board of Trustees of the Village of Muttontown hereby finds that there is a direct relationship between the preservation and planting of trees, shrubs and associated vegetation in sufficient number in the village and the health, safety and welfare of village residents and that trees, shrubs and associated vegetation are related to the natural, scenic and aesthetic values and the physical and visual qualities of the environment which the village is obligated to protect. Trees and such vegetation reduce noise, provide welcome shade to village residents, preserve the balance of oxygen in the air by removing carbon dioxide and fostering air quality and create a bucolic and rural atmosphere in the village, especially along the roads. Trees and such vegetation also stabilize the soil and control water pollution by preventing soil erosion and flooding, yield advantageous climatic effects and provide a natural habitat for wildlife.

B. The destruction and indiscriminate removal of trees, shrubs and related vegetation disrupts the ecological balance in nature and causes increased village costs for proper drainage control, impairs the benefits of occupancy of existing residential properties and impairs the stability and value of both improved and unimproved real property in the area

of the destruction and adversely affects the health, safety and general welfare of the residents of the Village of Muttontown.

§ 172-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated.

APPLICANT — The owner, contract vendee or lessee of real property or its duly authorized agent seeking a permit to substantially alter, destroy or remove trees, shrubs and associated vegetation pursuant to the provisions of this chapter.

DESTROY — Includes, without limitation: poisoning; ringing the tree; excessive peeling of bark; damaging, compacting or overburdening the roots; using herbicides or fire; or excessive pruning or cutting in such manner as to bring about the ultimate death of such tree, shrubs and associated vegetation.

EMERGENCY — An imminent threat of death, personal injury, or severe and substantial damage to property.

LARGE TREE — A woody perennial plant being either deciduous or evergreen, its root system and environment within the area defined as the outermost limit of its branches, which is seven inches or more by caliber or 22 inches in circumference measured at any point between the ground and a height of three feet above the ground.

PERSON — Any individual, firm, partnership, association, corporation, company, public agency, public utility or organization of any kind and its successor or agent thereof.

PROTECTED VEGETATION — All trees, shrubs, or groundcover of any size, the removal, cutting down, destruction or substantial alteration of which is regulated by this Chapter.

SHRUBS — Plants with several permanent woody stems dividing from the bottom.

SMALL TREE — A woody perennial plant being either deciduous or evergreen, its system and environment within the area defined as the outermost limit of its branches, which is less than seven inches by caliber or 22 inches in circumference measured at any point between the ground and a height of three feet above the ground.

SUBSTANTIALLY ALTER — Any cutting or pruning in excess of that necessary to preserve the health of the plant material or maintain its ornamental quality.

TREE — Any large tree or small tree.

VILLAGE — The Incorporated Village of Muttontown.

§ 172-3. Permit required; exception.

A. It shall be unlawful for any person to remove, cut down, destroy or substantially alter a tree or other protected vegetation located within the village, living or dead, in any of the following categories, unless a permit has been obtained pursuant to this chapter:

- (1) any large tree,
- (2) any small tree, shrub, or ground covering plant regardless of size, located on a steep slope or bluff,
- (3) any small tree, shrub or ground covering plant within a freshwater wetland,
- (4) any small tree, shrub or ground covering plant in a park or nature preserve, or within any public right-of-way,
- (5) any rare or endangered species of small tree, shrub, or ground covering plant as listed by any agency of New York State or the United States,
- (6) any outstanding specimen of small tree, shrub or groundcover, or any historic small tree, shrub or ground covering plant, or any small tree included on New York State's "Big Tree List,"
- (7) any small tree, shrub, or ground covering plant within an area of the Village designated by resolution of the Board of Trustees as a critical environmental area.

B. Nothing in this chapter shall be construed to prohibit the pruning of any trees made in accordance with customarily accepted ornamental procedures.

C. This chapter shall not apply:

- (1) to the Village,
- (2) in an emergency, or
- (3) to normal tree trimming and cutting by a utility company to maintain utility lines or cables.

§ 172-4. Administration.

This chapter shall be administered by the Board of Trustees.

A. The Board of Trustees may adopt rules and regulations for efficiently discharging its responsibility under this chapter and may create subcommittees or designate individual members to act on its behalf.

B. The Board of Trustees, in making a determination concerning removal of trees or other protected vegetation may obtain the services of a professional arborist regarding the advisability of removal. The cost of such professional evaluation shall, in all cases, be borne by the applicant.

§ 172-5. Application for permit.

A. The application shall be made in such form as may be prescribed by the Board of Trustees, or its designee, and shall include, but not be limited to, the following:

- (1) The name and address of the applicant and the owner of the real property.

(2) Written consent of the owner or owners of the real property if the applicant is not the owner.

(3) Location of the property, including a street number and address and Tax Map designation.

(4) Purpose of proposed removal or alteration of tree or other protected vegetation.

(5) Site of proposed removal or alteration of tree or other protected vegetation.

B. A sketch or plan of the property indicating some or all of the following may be required by the Board of Trustees when deemed necessary to carry out the provisions of this chapter:

(1) An outline of existing heavily wooded areas on the site, showing the tree type and range of sizes.

(2) The location of any existing and proposed improvements and structures on the real property.

(3) Any proposed grade changes that might adversely affect or endanger any trees on the site and specifications of how to maintain them.

(4) Designation of all diseased, dead or damaged trees.

(5) Location of all trees and identification of size and species and identification of the trees to be removed and the trees to be maintained.

(6) The size, species and planting method of all proposed plans for replanting, replacement or remediation.

(7) Any additional information that the Board of Trustees may reasonably deem necessary for evaluation of the application.

C. In the event that any large trees or other protected vegetation are proposed to be destroyed, moved, cut, substantially altered as a consequence of any construction, whether an addition, expansion or new structure, the Building Department shall require a removal or alteration plan showing the location of the large trees or other protected vegetation to be removed. No cutting, removal or alteration in connection with construction shall be permitted until the plan is approved by the Board of Trustees or its designee. The existing indigenous and naturalized tree canopy shall remain in its natural state on all lots and parcels to the maximum extent possible in conformity with the goals and purposes of this chapter.

D. In the event that any large trees or other protected vegetation are proposed to be destroyed, moved, cut, or substantially altered as a consequence of any proposed subdivision or partitioning of real property and the potential development thereof including, without limitation, the construction of new dwellings and any access roads, then simultaneously with the submission to the Planning Board of a subdivision application, the applicant shall also submit to the Board of Trustees or its designee a proposed site plan and tree survey prepared by a licensed land surveyor showing the location of all proposed buildings, roads and other improvements, the large trees to be affected, the size of such trees and the type or species thereof, including those large trees that might be affected not only by the construction but by any associated grading, in order that the Board of Trustees or its designee may consider all this when it inspects the site to

determine if any large trees can be saved by the applicant or warrant special protection pursuant to the guidelines of § 172-3A.

E. In the event that any large trees or other protected vegetation are proposed to be removed, cut, destroyed or substantially altered in connection with any matter involving an application to the Zoning Board of Appeals, then, simultaneously with the submission of an application to said Board, the applicant shall also submit for approval by the Board of Trustees or its designee an application provided for in this chapter and a sketch or plan as provided hereinabove.

F. All plans for landscape redesign that would involve any activity regulated by this chapter, or that would include the construction of walls, walling bridges or any similar structures shall be submitted to the Building Department for issuance of a permit. If such plans include the invasion of what is then a natural wooded area, the Building Department shall forward such plans to the Board of Trustees for approval by the Board or its designee.

§ 172-6. Penalties for offenses.

A. Each large tree, small tree, shrub or groundcover removed, cut down, destroyed or substantially altered in violation of this chapter shall be a separate violation.

B. The Mayor, Village Tree Warden, Building Inspector, Highway Commissioner, or Code Enforcement Officer shall stop all tree work and/or construction activity on any premises where a violation of this chapter has occurred, and the Building Department shall be prohibited from issuing any certificate of occupancy or additional permits for construction at the property or permitting work to resume unless and until there has been complete compliance with the provisions of this chapter.

C. Any person committing an offense against any provision of this chapter, or any rule, regulation or specification promulgated hereunder shall, upon conviction, be punishable for each violation by a fine in the amount of \$250 for each caliber inch, or part thereof, of tree and \$250 for each shrub or ground covering plant; and/or imprisonment for a term not exceeding 15 days. In addition, such person shall be required to replace, in kind, each and every large tree or other protected vegetation removed, cut down or destroyed. In the event a large tree was so large and mature that it cannot be replaced, the court may require the planting of multiple trees.

§ 172-7. Enforcement; presumptions.

A. The Mayor, Village Tree Warden, Building Inspector, Highway Commissioner, Code Enforcement Officer, and members of the Old Brookville Police Department, are hereby vested with the authority to enforce the provisions of this chapter.

B. It is a rebuttable presumption, for the purpose of enforcing this chapter that the owner on whose land any tree has been removed, cut down, destroyed or substantially altered

without the necessary permit is the person responsible for performing or permitting the act complained of.

This local law is effective upon filing with the Secretary of State.

Final adoption by the Board of Trustees of the Incorporated Village of Muttontown.

STATE OF NEW YORK
COUNTY OF NASSAU

I hereby certify that the local law annexed hereto, designated as Local Law 5 of 2006 of the Village of Muttontown was duly passed by the Board of Trustees on December 12, 2006, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript thereof and of the whole of such original local law, and was finally adopted by the Board of Trustees of the Incorporated Village of Muttontown.

Vivien Van Wagner
Village Clerk/Treasurer
Village of Muttontown
Date: December 12, 2006

Seal

Certification by the Village Attorney

STATE OF NEW YORK
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Steven G. Leventhal
Village Attorney
Village of Muttontown
Date: December 12, 2006