

DRAFT LOCAL LAW NO. ____ OF 2018

**CITY COUNCIL
CITY OF BEACON**

**PROPOSED LOCAL LAW TO ADD
CHAPTER 202 AND AMEND CHAPTER 204 OF THE CODE OF THE
CITY OF BEACON**

A LOCAL LAW to add Chapter 202 to the Code of the City of Beacon and amend Chapter 204 of Code of the City of Beacon, concerning Tree Preservation and Tree Removal.

BE IT ENACTED by the City Council of the City of Beacon as follows:

SECTION 1. Chapter 202 entitled “Tree Preservation” is hereby added to the Code of the City of Beacon as follows:

Chapter 202. Tree Preservation

§ 202-1. Purpose

The City Council finds that it has been established that trees stabilize the soil and control water pollution by preventing soil erosion and flooding, reduce air pollution, provide oxygen, yield advantageous microclimatic effects, temper noise and, further, that unusual, large and old trees have unique aesthetic and historic values. Indiscriminate removal of trees causes deprivation of these benefits and disrupts the City’s ecological systems. It is, therefore the purpose of this chapter to prevent the indiscriminate or unnecessary destruction of trees within the City of Beacon.

§ 202-2. Applicability.

No tree regulated under this chapter shall be cut or removed from any land in the City without having first obtained a tree removal permit.

§ 202-3. Definitions.

For the purposes of this chapter, the following terms, phrases and words shall have the meanings indicated:

APPLICANT

Any individual or individuals, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including a municipal corporation, governmental agency or subdivision thereof, filing an application pursuant to this chapter.

DBH (DIAMETER AT BREAST HEIGHT)

The diameter or caliper of a tree measured at a point 4 ½ feet above ground, or at the highest measurable point of the remaining stump if less than 4 ½ feet, on the uphill side of the tree.

DEAD TREE

A tree that lacks vitality, is lifeless and without foliage.

TREE

A living, woody plant with an erect perennial trunk and a definitely formed crown of foliage.

TREE REMOVAL

Any act which will cause a tree to be cut or removed or to die within a one-year period.

TREE REMOVAL PERMIT

A permit granted pursuant to the requirements of this chapter which allows the removal of one or more trees.

§ 202-5. Tree removal permit required; approving authority.

A. A tree removal permit will be required before removing:

- (1) Any tree eight inches or more in DBH.
- (2) Any tree six inches or more in DBH growing on slopes of over 20%.
- (3) Any threatened or endangered species of tree, regardless of size, as defined by the New York State Department of Environmental Conservation.
- (4) More than 10 trees with a DBH of six inches or greater on a lot, within any twelve-month period.

- B. Exceptions. Notwithstanding the foregoing, no permit shall be required for the removal of:
- (1) The business and operation of commercial nurseries, fruit orchards, and tree farms.
 - (2) Removal of trees as part of an active agricultural activity on a lot located within a designated agricultural district.
 - (3) Removal of trees that are dead, dying, or diseased, or trees which have suffered damage, or any tree whose angle of growth makes then a hazard to structures, roads, or human life as determined by the Highway Superintendent, Building Inspector, City Engineer, or other duly authorized representative of the City.
 - (4) Removal of trees which appear to cause structural damage to buildings or foundations as determined by the Building Inspector, the City Engineer, or other duly authorized representative of the City.
 - (5) Removal of any tree under an actual or ongoing emergency condition when such tree removal is necessary for the protection and preservation of life or property.
 - (6) Permitted forest management activities on properties covered under § 480-a of the Real Property Tax Law.
 - (7) Trees directed to be removed by municipal, county, state, or federal authority pursuant to law.
 - (8) Removal or pruning of trees in any highway, sidewalk or public place. No shade or ornamental tree or shrub in any highway, sidewalk or public place in the City shall be cut, pruned, or removed, nor shall the roots, stems, branches or leaves of such tree be cut, broken or otherwise disturbed, until and unless a permit therefor has been granted by the City Clerk pursuant to § 203-2.
- C. The approving authority for all applications under this chapter shall be the City Engineer. Where tree cutting or removal is proposed in connection with any site plan, subdivision approval, or special use permit approval submitted to the Planning Board, trees shall be cut or removed from the subject property only in conjunction with an approved final subdivision plat, final site plan, or final special use permit approval, in which case a separate tree removal permit shall not be required. The Planning Board shall consider the criteria listed in § 202-6.A and may impose conditions as set forth in §§ 206-6.B and 202-9.

§ 202-6. Tree removal permit

- A. Unless otherwise indicated herein, a tree removal permit may be granted if the City Engineer determines that the application meets one or more of the following criteria:

- (1) The continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought or upon adjoining or nearby property.
- (2) The location of the designated tree or trees prevents compliance with state, county or local standards for sight lines, driveways or intersections.
- (3) The location of the tree or trees prevents the property owner from undertaking otherwise approved construction or alteration because the location of the designated tree or trees substantially interferes with a permitted use of the property and the construction or alteration cannot be reasonably modified to accommodate the designated tree or trees; written explanation may be required describing how the designated tree or trees interferes with construction or alteration and why the construction or alteration cannot be modified reasonably to accommodate the designated tree or trees.
- (4) The area where such tree or trees are located has a cut, depression, or fill of land, or the topography of the land is of such a character as to be injurious or dangerous to such tree or trees, or to tree or trees located nearby.
- (5) The designated tree or trees, due to death, disease, blight, infestation, storm damage, accident or other condition, causes undue hardship for the property owner to maintain.
- (6) The tree is dead, or so substantially diseased that it constitutes a danger to person, property or other trees.
- (7) The removal of the tree is consistent with good silvicultural, horticultural or vegetation management and will not have an adverse visual or ecological impact.

B. The City Engineer may, as a condition of granting a permit:

- (1) Require the reasonable relocation of proposed foundation walls, driveways, grading, surface and subsurface improvements or drainage systems to preserve specific trees.
- (2) Require that each tree to be cut or removed be marked at one point low enough on the trunk to be visible after removal of the tree so as to permit subsequent inspection. Notwithstanding the above, where the use of a sampling technique has been approved, trees less than 22 inches in diameter at breast height need not be marked.
- (3) Require such safeguards as appropriate to minimize the environmental impact of such removal operations.

- (4) Require that the tree trunk, limbs, stump and any roots remaining above grade be removed to approximately two feet or less.
- (5) Require that the disturbed area be backfilled, replanted and/or reseeded.
- (6) Require the planting of a replacement tree or trees in accordance with § 202-9.
- (7) Impose such additional conditions as the City Engineer deems necessary to ensure compliance with the policies and provisions of this chapter.

§ 202-7. Permit application.

- A. Any person proposing to conduct or cause to be conducted a regulated activity specified regulated by this Chapter shall file an application for a permit with the approving authority as hereinafter provided prior to undertaking such cutting or removal. Such application shall include the following information:
 - (1) The name and address of the applicant.
 - (2) The address and City Tax Map designation of the property on which the tree(s) is/are located.
 - (3) The number and size in DBH of trees to be cut or removed.
 - (4) The purpose of the tree removal.
 - (5) Methods of removal
 - (6) Color photographs or slides showing the areas and environment where trees are to be removed, with sufficient detail to identify the remaining trees in the area after work is completed.
 - (7) Application fee to be set in a fee schedule determined by the City Council, except when the applicant is the City of Beacon.
 - (8) A boundary and topographic survey may be required by the City Engineer, if the City Engineer, within his or her discretion, determines that the proposed tree removal is significant enough to have potential impacts on neighboring properties. The survey shall be prepared by a New York State-licensed professional land surveyor of that section to be disturbed, showing location of any water bodies, water courses, and site improvements as well as all trees six inches DBH or greater, indicating those trees to be cut or removed and those trees to be preserved, their species and their diameter. Trees shall have numbering and tagging. The numbering and tagging shall be both in the field as well as illustrated on the plan.

§ 202-8. Inspection; Indemnification

Any site for which an application for a tree removal permit has been submitted shall be subject to inspection by the approving authority or its designated representatives upon notice to the property owner and applicant at any reasonable time, including weekends and holidays. The applicant, by making application for such permit, shall be deemed to have given its consent to such inspection. The applicant shall indemnify and hold the City harmless against any damage or injury that may be caused by or arise out of any entry onto the subject property in connection with the process of the application, during construction or performance of the work or within one year after the completion of the work.

§ 202-9. Tree replacement and reforestation.

- A. The City Engineer may require the planting of a replacement tree or trees as prescribed in the following table.

Tree Replacement Schedule

<u>DBH of Existing Tree Removed</u>	<u>Number of Replacement Trees (3 inch caliper)</u>
<u>Less than 6 inches</u>	<u>1</u>
<u>Between 6 and 12 inches</u>	<u>3</u>
<u>Between 12 and 18 inches</u>	<u>4</u>
<u>Between 18 and 24 inches</u>	<u>5</u>
<u>Between 24 and 30 inches</u>	<u>6</u>
<u>Between 30 and 36 inches</u>	<u>10</u>
<u>36 inches or greater</u>	<u>The equivalent of 3 inch caliper trees or greater needed to equal the DBH of the cur or removed tree</u>

- B. Replacement tree(s) shall be of nursery grade quality, balled and burlapped and located on site. Where replacement trees are required, but not suitable for the particular site prescribed due to the size of the site, the City may deposit the trees into a community tree bank. Trees deposited into the community tree bank shall be utilized for planting on public land.

- C. The type of replacement tree(s) shall be the same as the species cut or removed from the site or other as approved by the City Engineer.
- D. The planting of all replacement trees shall be done by or supervised by a person with horticultural training in tree care and planting methods as retained by the applicant/developer. Said expert shall certify that the planting of the replacement trees was conducted in compliance with standards established by American Association of Nurseryman.
- E. Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees by a person with horticultural training in tree care and planting methods as retained by the applicant/developer. If any of the replacement trees die within the one-year period from their planting, the developer/applicant shall replace the dead tree(s)

§ 202-10. Penalties for offense.

- A. Any person, firm, corporation, or other entity who or which undertakes any regulated activity without a tree removal permit required by this chapter or who violates any condition attached to a tree removal permit, or who otherwise violates any of the provisions of this chapter shall be guilty of an offense punishable by a fine of not more than \$350. Each tree cut or removed without a tree removal permit required by this chapter or in violation of any condition attached to a tree removal permit or otherwise in violation of this chapter shall constitute a separate offense subject to the \$350 penalty. For a second and each subsequent violation within a one-year period, the violator shall be guilty of an offense punishable by a fine of not more than \$1,000 or a term of imprisonment of not more than 15 days, or both.
- B. Each violation of the provisions of this chapter shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. In addition, the court may order or direct a violator to replace any or all trees cut or removed illegally, with a size and type selected by the City Engineer. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Building Inspector.

§ 202-11. Appeals.

- A. Any applicant aggrieved or affected by the determination of the City Engineer with respect to an application for a tree removal permit may, within 10 business days of such determination, appeal to the Zoning Board of Appeals, stating the reason for such appeal. The Zoning Board of Appeals shall conduct a public hearing on the appeal within 60 calendar days of receipt of such appeal and shall, based upon the standards contained herein and the facts of the matter, deny, grant or grant with conditions the permit being sought. Notice of said public hearing shall be provided by the applicant

in accordance with § 223-61.3 of the City of Beacon Zoning Code. Upon appeal, the City Engineer's approval shall be suspended.

- B. Any person or persons jointly or severally aggrieved by a decision of the Zoning Board of Appeals pursuant to this chapter may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice and Law and Rules.

SECTION 2. The Title of Chapter 204 of the Code of the City of Beacon entitled "Sand and Gravel Excavation and Tree Removal" is hereby amended as follows:

Chapter 204: Sand and Gravel Excavation ~~and Tree Removal~~

SECTION 3. Chapter 204, Section 1 of the Code of the City of Beacon entitled "Definition" is hereby amended as follows:

§ 204-1. Definitions.

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

EXCAVATION or GRADING

Excavation or grading by blasting or by use of power-assisted machinery or equipment.

~~SLASHING OF TREES~~

~~The cutting, grubbing or other removal of any three or more live trees in any calendar year, when such trees are located within less than 100 feet of each other and have a caliper of six inches or more at height of three feet above ground.~~

SECTION 4. Chapter 204, Section 2 of the Code of the City of Beacon entitled "Regulated activities; temporary permit" is hereby amended as follows:

§ 204-2. Regulated activities, temporary permit.

On any lot, excavation, grading or removal of topsoil, clay, sand, gravel, rock or other earth materials; dumping, and filling or depositing of such earth materials or fill of any kind; ~~and slashing of trees~~ are activities regulated under this chapter and are permitted only under a temporary permit granted by the City Engineer under §§ **204-3** through **204-9** or as one of the exemptions hereinafter specified. Within 20 days after the City Engineer has granted a temporary permit under this chapter, the City Council may, at its discretion, approve, modify and approve or disapprove the temporary permit. Any failure by the City Council to take action within said twenty-day period shall be deemed to be an approval by the City Council.

SECTION 5. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 204 of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

SECTION 6. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

SECTION 7. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.