

DRAFT LOCAL LAW NO. ____ OF 2018

**CITY COUNCIL
CITY OF BEACON**

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

A LOCAL LAW to 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 204 of the Code of the City of Beacon entitled “Sand and Gravel Excavation and Tree Removal” is amended as follows:

ARTICLE I. DEFINITIONS

§ 204-1 Definitions.

As used in this chapter, the following terms 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.

COMMUNITY TREE BANK

City-owned lands or City right-of-way lands to be designated by resolution of the City Council as receiver sites for off-site mitigation plantings to satisfy tree replacement requirements which cannot be met on-site.

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

EXCAVATION or GRADING

Excavation or grading by blasting or by use of power-assisted machinery or equipment. The excavation, grading, removal or processing of topsoil, clay, sand, gravel, rock or other earth materials; dumping, filling or depositing of such earth materials or fill of any kind.

SLASHING OF TREES

The cutting down, 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 DBH of six inches or more at height of three feet above ground.

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 down 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.

ARTICLE II. EXCAVATION AND GRADING PERMIT

§ 204-2 ~~Regulated activities: temporary permit.~~ Excavation or Grading Permit.

Excavation or Grading activities on any lot are regulated under this article and are permitted only under an Excavation or Grading Permit granted by the Building Inspector.

~~On any lot, excavation, grading or removal of topsoil, clay, sand, gravel, rock or other earth materials; dumping, 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 Building Inspector 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.~~

§ 204-3 Application for ~~temporary permit~~ Excavation or Grading Permit.

Before any ~~temporary~~ permit for Excavation or Grading shall be granted, a written application shall be submitted to the Building Department ~~City Engineer~~, together with an application fee in accordance with the City of Beacon Fee Schedule, a cost estimate of the project and maps and plans, prepared by and bearing the seal of a land surveyor or professional engineer licensed to practice in the State of New York, showing the following:

- A. The area to be excavated or graded.
- B. Existing contour lines on the premises and proposed contour lines resulting from the intended excavation or removal, shown on a map drawn to a scale of not less than 100 feet to the inch and with a contour interval not to exceed two feet.
- C. Existing and proposed drainage on the premises.
- D. Existing state or federally regulated wetlands, rivers, streams or watercourses on or adjacent to the premises.
- E. Adjoining properties and streets.
- F. Proposed truck access to the property.
- G. Such additional information as the Building Inspector or City Engineer may deem necessary in order to decide upon such application.
- H. Erosion and sediment control to be employed during operations and restoration.

§ 204-4 Referral of application to City Engineer.

- A. Each application for an Excavation or Grading Permit shall be referred to the City Engineer by the Building Department within five days of the date of application. Within 30 days of the date of referral, the City Engineer shall forward its recommendation to the Building Inspector and shall indicate whether the application should be approve, disapproved or approved with modifications. The City Engineer shall take into consideration whether such excavation will result in the creation of any

sharp declivities, pits or depressions, soil erosion or fertilize problems, decrease property values, create any drainage or sewerage problems or other considerations which would impair the use of the property in accordance with the Zoning Ordinance.

- B. The applicant is responsible for reimbursing the City for the cost of professional review fees in connection with an application submitted to the City in accordance with the procedure set forth in § 223-61.1.

§ 204-45 Criteria for issuance of temporary permit for an Excavation or Grading Permit.

In acting on any application for an Excavation or Grading Permit, the Building Inspector shall take into consideration the recommendations of the City Engineer. The City Engineer Building Inspector may grant an temporary permit Excavation or Grading Permit for a limited period of time, not exceeding two years, if he or she shall determines find that such excavation will not result in the creation of any sharp declivities, pits or depressions, soil erosion or fertility problems, depressed land values nor create any drainage or sewerage problems or other conditions which would impair the use of the property, in accordance with the Zoning Ordinance, and that such excavation will be in harmony with the general purpose and intent of the Zoning Ordinance, and if the City Engineer Building Inspector further finds that the temporary permit Excavation or Grading Permit to be granted is capable of being completed within the time provided in the permit.

§ 204-56 Standards and conditions for issuance of a temporary permit for Excavation or Grading.

An temporary permit Excavation or Grading Permit shall be granted only subject to the following standards and conditions:

- A. That the premises shall be excavated and graded in conformity with the proposed contour plan, as approved.
- B. That slopes shall not exceed 30° to the horizontal or such lesser slope that the City Council may specify as necessary for the public health or safety, soil stability or for the reasonable use of the property after completion of the excavation.
- C. That no fixed machinery shall be erected or maintained in connection with the excavation and that no building shall be erected on the premises except temporary shelters for machinery and a field office.
- D. That there shall be no excavation or removal within 50 feet of any street or property line, except that, where the property to be excavated is considerably above street grade at the street line, removal may take place at a lesser distance from the street line if approved by the Building Inspector or City Engineer.

- E. That no regulated wetlands or required buffers be disturbed without proper state or federal approvals and that there shall be no sharp declivities, pits or depressions and that proper drainage will be provided to avoid stagnant water, soil erosion and water pollution.
- F. That after excavation or removal, the premises shall be cleared of debris within the time provided in the permit.
- G. That the top layer of arable soil for a depth of six inches shall be set aside and retained on the premises and shall be respread over the premises and that a suitable ground cover shall be planted and grown to an erosion-resistant condition, upon the completion of the excavation or removal, in accordance with the approved contour lines, and that such work shall be completed within the time provided for in the permit.
- H. If required by the Building Inspector or City Engineer, that the area to be excavated or a portion thereof shall be enclosed within a fence of such type, height and location as the Building Inspector City Engineer may specify.
- I. That the Building Inspector or City Engineer may establish a schedule to be filed with the records of such application and ~~temporary permit~~ Excavation or Grading Permit showing limitations on the day of the week or the hours of the day during which any work may be performed on the premises; limitations as to the size and type of machinery to be used on the premises; place and manner of disposal of excavated material; and requirements as to the control of dust, noise and lighting, if permitted, so as to prevent results injurious or offensive to the general public.
- J. That the Building Inspector City Engineer may require the applicant to submit periodic reports, prepared by and bearing the seal of a land surveyor or professional engineer licensed to practice in the State of New York, showing the status and progress of the excavation, and may require the applicant to pay to the City an inspection fee in an amount deemed necessary by the Building Inspector or City Engineer to defray the cost of inspection of the operation.

§ 204-6-7 Performance bond.

The applicant shall file with the City Clerk a performance bond, in form and with surety acceptable to the City Council, in such amount as the Building Inspector or City Engineer may deem sufficient to insure the faithful performance of the work to be undertaken.

§ 204-7 8 Revocation or suspension of Excavation or Grading Permit ~~temporary permits~~.

Any ~~temporary permit~~ Excavation or Grading Permit issued pursuant to the provisions of this ~~article~~ chapter may be revoked by the Building Inspector City Engineer, after written notice to the applicant, notice, in writing, and a hearing, for violation of any conditions of

the ~~temporary permit~~ Excavation or Grading Permit; violation of any provision of this ~~article~~ chapter, or any other law or ~~other~~ regulation relating to the work permitted; or the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the life or property of another. Written notice shall be served by registered mail, return receipt requested, and by regular mail, to the applicant at the address shown on the application. The notice shall describe the reasons why the City is revoking the permit.

- ~~A. Notice. The notice shall describe the violation charged and may be either delivered personally or mailed postage prepaid to the address appearing on the application.~~
- ~~B. Suspension. Any temporary permit may be suspended for cause by the Building Inspector for a period not exceeding five days without a hearing. All work under any special permit shall be suspended following notice of hearing to revoke as provided for in this section.~~

§ 204-8.2 Exemptions.

~~An temporary permit~~ Excavation or Grading Permit is not required for conduct of one or more of the aforesaid regulated activities in the following cases, provided that the activity is conducted and completed in such a manner as to cause no danger to the public health and safety and no stagnant water, soil erosion, sedimentation, water pollution, excessive drainage runoff or flooding problems:

- A. In connection with a bona fide landscaping or other site improvement on a lot, provided that no fill is deposited within a watercourse, water body, swamp or other wetlands, and provided that disturbed areas are properly graded and reseeded or otherwise planted.
- B. In connection with the grading of land in or the construction and installation of roads, drainage and other improvements in a subdivision plat granted final approval by the Planning Board and only in accordance with plans as approved by the Planning Board.
- C. In connection with the construction, reconstruction, enlargement, moving or structural alteration of a building or other structure, including construction and installation of site improvements related thereto, for which an application for a certificate of occupancy and/or building permit shall have been approved by the Building Inspector, and only in accordance with plans accompanying such approved application or permit.
- D. In connection with a bona fide farming or forest management operation.
- ~~D. In connection with a bona fide landscaping or other site improvement on a lot, provided that no fill is deposited within a watercourse, water body, swamp or other wetlands, and provided that disturbed areas are properly graded and reseeded or otherwise planted.~~

§ 204-10. Appeals.

- A. The City Administrator shall hear and decide appeals from and review any order, denial, suspension or revocation made by the Building Inspector.
- B. Upon the denial of an application, or the suspension or revocation of a license, the applicant may, within 10 business days after receiving written notice, file a request, in writing, upon the City Administrator for review of said decision by the Building Inspector. Notice of the date, place and time of the hearing shall be given in writing by mail to the applicant at the address shown on the application. In the event that demand for a hearing is not made within the prescribed time or in the event that the applicant does not timely appear for the hearing, the Building Inspector's decision shall then be final and conclusive.
- C. The hearing shall commence no later than 30 days after the date on which the request was filed.
- D. The applicant shall be given an opportunity to present evidence why such denial of application, or such suspension or revocation of the license, shall be modified or withdrawn. The Building Inspector or his designated agent may also present evidence. Upon consideration of the evidence presented, the City Administrator shall sustain, modify or withdraw the decision of the Building Inspector or his designated agent.
- E. In the event the applicant is not satisfied with the decision of the City Administrator, such aggrieved party may file an Article 78 proceeding under the New York Civil Practice Law and Rules. The Article 78 proceeding must be filed within 30 days of the filing of the City Administrator's decision with the City Clerk of the City of Beacon and service of the same upon the applicant.

§ 204-9 11 Penalties for offenses.

Any person who shall violate any provision of this ~~article chapter~~ shall be liable to a fine of not more than ~~\$2350~~ or imprisonment for not exceeding 15 days, or both such fine and imprisonment.

ARTICLE II TREE REMOVAL PERMITS

§ 204-12 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

article to prevent the indiscriminate or unnecessary destruction of trees within the City of Beacon.

§ 204-13. 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) When Slashing of Trees is proposed or occurs.
- (3) Any threatened or endangered species of tree, regardless of size, as defined by the New York State Department of Environmental Conservation.

B. The approving authority for all applications under this article shall be the Building Inspector. 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.

§ 204-14. Tree removal permit.

- A. Any person proposing to conduct or cause to be conducted an activity regulated by this article shall file an application for a permit with the approving authority as hereinafter provided prior to undertaking such cutting down or removal on a form provided by the Building Department.
- B. A tree removal permit may be granted if the Building Inspector determines in his sole discretion that removal of the tree(s) is warranted for the orderly maintenance, use or development of the Property in keeping with the purposes of this article.
- C. The Building Inspector 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 such safeguards as appropriate to minimize the environmental impact of such removal operations.
 - (3) Require that the tree trunk, limbs, stump and any roots be removed from the ground.
 - (4) Require that the disturbed area be backfilled, replanted and/or reseeded.

- (5) Impose such additional conditions as the Building Inspector deems necessary to ensure compliance with the policies and provisions of this article.

§ 204-14. 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.

§ 204-15 Tree replacement.

- A. A tree removal permit shall require the planting of replacement 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>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 cut down 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 as determined by the Building Inspector, 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, if noninvasive, as approved by the Building Inspector. The Building Inspector may require the planting of other native species so as to promote plant diversity and enhance local habitats. All planting shall be done within one planting season.
- 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. If any of the replacement trees die within the one-year period from their planting, the applicant shall replace the dead tree(s).

§ 204-16 Revocation or suspension of a tree removal permit.

Any permit issued pursuant to this section may be revoked or suspended by the Building Inspector, after written notice to the applicant, for any violation of any conditions of the tree removal permit; violation of any provision of this article, or violation of any other law or regulation relating to the work permitted; or the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the life or property of another. Written notice shall be served by registered or certified mail, return receipt requested, and by regular mail, to the applicant at the address shown on the application. The notice shall describe the reasons why the City is revoking the permit.

§ 204-17 Appeals.

- F. The City Administrator shall hear and decide appeals from and review any order, denial, suspension or revocation made by the Building Inspector.
- G. Upon the denial of an application, or the suspension or revocation of a license, the applicant may, within 10 business days after receiving written notice, file a request, in writing, upon the City Administrator for review of said decision by the Building Inspector. Notice of the date, place and time of the hearing shall be given in writing by mail to the applicant at the address shown on the application. In the event that demand for a hearing is not made within the prescribed time or in the event that the applicant does not timely appear for the hearing, the Building Inspector's decision shall then be final and conclusive.
- H. The hearing shall commence no later than 30 days after the date on which the request was filed.

- I. The applicant shall be given an opportunity to present evidence why such denial of application, or such suspension or revocation of the license, shall be modified or withdrawn. The Building Inspector or his designated agent may also present evidence. Upon consideration of the evidence presented, the City Administrator shall sustain, modify or withdraw the decision of the Building Inspector or his designated agent.
- J. In the event the applicant is not satisfied with the decision of the City Administrator, such aggrieved party may file an Article 78 proceeding under the New York Civil Practice Law and Rules. The Article 78 proceeding must be filed within 30 days of the filing of the City Administrator's decision with the City Clerk of the City of Beacon and service of the same upon the applicant.

§ 204-18 Penalties for offenses.

- A. Any person, firm, corporation, or other entity who or which undertakes any regulated activity without a tree removal permit required by this article or who violates any condition attached to a tree removal permit, or who otherwise violates any of the provisions of this article 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 article or in violation of any condition attached to a tree removal permit or otherwise in violation of this article 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 article 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 Building Inspector. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Building Inspector.

SECTION 2. 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 3. 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 therefrom.

SECTION 4. Effective Date

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