

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

FILED
STATE RECORDS

JUN 29 2021

County City Town Village
(Select one.)

of the Incorporated Village of Hewlett Harbor.

DEPARTMENT OF STATE

Local Law No. 2 of the year 2021

A local law Re: Dangerous trees, tree protection & penalties for offenses on private property within the
(Insert Title)
Village.

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of the Incorporated Village of Hewlett Harbor. as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

LOCAL LAW # 2 OF 2021

Village of Hewlett Harbor, NY / The Code Chapter 112 **Trees**

GENERAL REFERENCES

Architectural and landscaping review — See Ch. 15.

Fees and deposits — See Ch. 60.

Defacement of property — See Ch. 127.

Property maintenance — See Ch. 130.

Article I **Dangerous Trees**

§ 112-1 **Legislative declaration; intent.**

§ 112-2 **Definitions.**

§ 112-3 **Dangerous trees prohibited.**

§ 112-4 **Enforcement; notice; hearing; corrective action.**

§ 112-5 **Authority to hire experts.**

§ 112-6 **Failure to remedy dangerous condition; work to be done by Village; assessment of costs.**

§ 112-7 **Penalties for offenses.**

Article II **Tree Protection**

§ 112-8 **Legislative intent and purpose.**

§ 112-9 **Definitions.**

§ 112-10 **Removal of trees without permit prohibited; exception for emergencies.**

§ 112-11 **Permit and application.**

§ 112-12 **Replacement of trees; withholding of certificates.**

§ 112-13 **Appeals.**

§ 112-14 **Fees.**

§ 112-15 **Penalties for offenses.**

Article I **Dangerous Trees**

§ 112-1 **Legislative declaration; intent.**

A.

A safe, wholesome, attractive environment is declared to be of importance to the health, safety and welfare of the inhabitants of the Village of Hewlett Harbor and, in addition, such an environment is deemed essential to the maintenance and continued development of the ecology and well-being of the Village and the general welfare of its residents and citizens. It is further declared that the existence of diseased, decayed and dangerous trees on or about the streets and other public places in the Village and/or in close proximity thereof, so that safe usage of such streets and other public places is jeopardized, constitutes a hazard to health, safety and welfare of citizens of the Village and so endangers the public usage that the regulation, restraint and elimination of such dangerous trees is necessitated.

B.

Nothing in this article is intended to pertain to trees which are on private property and may cause a danger to other private property.

§ 112-2 **Definitions.**

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

DANGEROUS TREE

Any tree or part thereof or any other growth on or about land in the Village owned by any individual or entity that is either dead, diseased, decayed, damaged or, due to other causes, in such a state that there exists a clear and present danger of said tree or any part thereof falling so that the free, safe and lawful usage of the land by the public or a neighboring resident would be impaired or endangered and/or cause a dangerous condition to public land or public right-of-way or a neighboring resident.

LANDOWNER

Any person who owns and/or leases land within the Village upon which is located a dangerous tree.

§ 112-3 **Dangerous trees prohibited.**

It shall be unlawful, after due notification, for any landowner in the Village to allow the existence of a dangerous tree on his land where said tree is, or may become, a hazard to the public or to any public property or to a neighboring resident as described hereafter.

§ 112-4 **Enforcement; notice; hearing; corrective action.**

A.

The Board of Trustees, from time to time, may provide for the inspection of trees within the Village and cause landowners with dangerous trees which may constitute a hazard to the public or to public property or to a neighboring resident to be informed of the dangerous tree or trees on their property.

B.

Every landowner shall be required to remove, cable, trim, or appropriately secure any dangerous tree on its property.

C.

Opportunity for trimming or removal or other appropriate securing shall be afforded a landowner by the granting of at least 30 days written notice from the Village, at the direction of the Board of Trustees, or such greater or lesser time as the Board of Trustees shall elect.

D.

Unless such landowner files a written request for a hearing before the Board of Trustees within the time directed to perform said work, the landowner shall take such corrective action within the time allotted. If a hearing is properly requested, the Board of Trustees may grant such hearing and determine whether the Village's notice should be enforced, modified or rescinded. Alternatively, the Board of Trustees may, by resolution, delegate and/or appoint an individual or individuals to conduct the hearing and to render a decision thereon, which decision shall have the same effect as a decision of the Board of Trustees.

E.

Failure to trim, cable, remove or appropriately secure a dangerous tree within the time specified to ensure a safe condition shall be a violation of this article.

F.

Notwithstanding the hearing procedure outlined herein, the Board of Trustees may deny a hearing and direct immediate compliance if it determines that an immediate danger exists to the health, safety and welfare of the Village or its residents.

§ 112-5 Authority to hire experts.

In finding a tree to be dangerous, the Village may hire a qualified tree surgeon or arborist to conduct the inspection of trees within the Village and may request confirmation of any findings by another qualified tree surgeon or arborist.

§ 112-6 Failure to remedy dangerous condition; work to be done by Village; assessment of costs.

A.

Upon the failure of a landowner to trim, cable, remove or otherwise secure a dangerous tree, the Board of Trustees may cause such tree to be trimmed, cabled, removed or secured and assess the expense thereof upon the real property involved, and such charge shall constitute a lien and charge upon the real property upon which it is levied until paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer. Such charge shall include, among other things, administrative, legal and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent taxes.

B.

Upon the failure of a landowner to trim, cable, remove or otherwise secure a dangerous tree, the Building Inspector shall stay any open permits and issue a "stop work order" for any construction or renovation until such dangerous tree issue is remedied to the satisfaction of the Building Inspector and the Planning Board. Only at such time will the permits and work will be permitted to continue.

C.

Said administrative and legal expenses incurred by the Village, not including the actual expenses incurred in physically trimming, cabling, removing or securing the dangerous tree or alleviating the dangerous condition, shall equal actual expenses.

§ 112-7 Penalties for offenses.

Each and every violation of, or failure to comply with, any provision of this chapter shall constitute a violation, punishable as follows: for a first offense, by a fine of not more than \$500 for a second offense, both of which were committed within a period of five years, by a fine of not less than \$500 nor more than \$1,000; and for a conviction of a third or subsequent offense, all of which were committed within a period of five years, by a fine of not less than \$1000 nor more than \$2,000. Each and every day on which the dangerous or hazardous condition continues after the date that such dangerous or hazardous condition was to be remediated, as set forth in the written notice delivered by the Village to the landowner, shall constitute a separate violation of this chapter and shall run consecutively.

Article II Tree Protection

§ 112-8 Legislative intent and purpose.

A.

The Board of Trustees finds that there is a direct relationship between the preservation and planting of trees and the health, safety, and welfare of Village residents, and that trees 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 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. Trees 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.

Hewlett Harbor was created with a park-like atmosphere formed by winding roads, numerous mature trees, considerable architectural diversity, and lots that conform to a complex site. The numerous mature trees within the Village are one of the essential features that continue to make the Village unique. Accordingly, the destruction of trees on any property within the Village, seriously threatens that plan and the unique character of the Village as a whole.

C.

This Board is aware of the trend on Long Island, and especially along the south shore of Nassau County, for developers to purchase one or more parcels of property for the purpose of **developing single parcels or subdividing the property into a greater number of parcels for development, often destroying vast numbers of trees in the process.** This Board believes that, in the event that this trend continues, the unique character of the Village may be destroyed.

D.

Moreover, for many developers, the value of **single parcels and subdivided property and new construction is so great, that fines for the violation of tree laws are merely costs** of doing business, and even when such fines are paid, the loss of such trees may be irreparable or may take decades to replace in size and grandeur.

§ 112-9 Definitions.

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

APPLICANT

The owner of real property, whether improved or unimproved, within the boundaries of the Incorporated Village of Hewlett Harbor, or the contract vendee, lessee or authorized agent of such owner.

HABITAT

The natural growing characteristics of any tree which includes branch spread and branch height above ground and root spread and distribution.

PERSON

Any individual, firm, partnership, association, corporation, company, public agency, public utility or organization of any kind.

PLANNING BOARD

The Planning Board of the Village.

SUBSTANTIALLY ALTER

Any cutting or drastic pruning or elevating the habitat of a tree which impairs or endangers the life of such tree or destroys its natural symmetry; and shall include, but not be limited to, heavy or unnecessary cutting of top branches and cutting of major lower limbs.

TREE

Any living woody plant having a trunk 10 inches or greater in circumference at a point five feet above ground level. However, in the event that any woody plant is removed, substantially altered, or destroyed without a permit and without a written determination of the Building Inspector that such

woody plant either did not have a trunk 10 inches or greater in circumference at a point five feet above ground level if the woody plant was within 10 feet of any property line, or did not have a trunk 22 inches or greater in circumference at a point five feet above ground level if located more than 10 feet from all property lines; or was not living, and such removal, substantial alteration, or destruction was performed in such a manner that the circumference of the plant at a height of five feet above ground level has been altered or the height of the plant has been reduced below five feet, then, in such event, there shall be a rebuttable presumption in the implementation, enforcement, and prosecution of this article that any such woody plant having a trunk of 10 inches or greater in circumference, but less than 22 inches in circumference at the highest unaltered point of the remaining portion of the plant, had a circumference of 10 inches or greater at a point five feet above ground level; and any such woody plant having a trunk of 22 inches or greater in circumference at the highest unaltered point of the remaining portion of the plant, had a circumference of 22 inches or greater at a point five feet above ground level. **Dead trees should be reported to the Building Inspector prior to removal except in the case of a lifeless tree or part thereof, causing a potential immediate threat to the life or limb of a person or damage to personal property in which case adequate photographs shall be taken evidencing proof for the building inspector of such dead tree. A dead tree may or may not require a permit for its removal. Such decision is at the discretion of the Building Inspector depending upon the length of time the dead tree was not removed subsequent to a notice by the Building Inspector. No dead tree shall be removed without the Building Inspector's approval.**

VILLAGE

The Incorporated Village of Hewlett Harbor.

§ 112-10 Removal of trees without permit prohibited; exception for emergencies.

A.

It shall be unlawful for any person to remove, substantially alter, or destroy any tree on any real property within the Village, when said tree is located within 10 feet of any property line, without a permit.

1. Upon impending sale of the property, prior to closing, a photograph of the existing trees must be presented to the Village Clerk to be placed in the property's file.

B.

It shall be unlawful for any person who owns or occupies real property within the Village to cause, suffer, permit, or allow the removal, substantial alteration, or destruction of any tree on that real property, when said tree is located within 10 feet of any property line, without a permit.

C.

It shall be unlawful for any person to remove, substantially alter, or destroy any tree within the Village with a circumference of 22 inches or greater as measured at a height of five feet above ground level without a permit.

D.

It shall be unlawful for any person who owns or occupies real property within the Village to cause, suffer, permit, or allow the removal, substantial alteration, or destruction of any tree on that real property with a circumference of 22 inches or greater as measured at a height of five feet above ground level without a permit.

E.

This article shall not apply in any emergency situation in which the removal, substantial alteration, or destruction of any tree is necessary to prevent imminent danger to human life or to property. The Building Inspector must be notified of any emergency situation involving the above.

§ 112-11 **Permit and application.**

A.

Any person who intends, wishes or deems it necessary to remove or destroy trees as defined above on any real property in the Village shall first apply for a permit therefore from **the Building Inspector**.

B.

The application shall be made on such form as may be prescribed by **the Building Inspector** which may, in turn, require approval by the **Planning Board**, which shall include but not be limited to the following:

(1)

Name and address of the applicant.

(2)

Name and address of the person or firm who will remove the tree or trees.

(3)

The reason for the proposed removal(s).

(4)

A survey of the real property showing the location of all structures if the property is being improved by a new home, accessory structure, or substantial alteration of the property.

(5)

A sketch or plan of the area indicating:

(a)

Location and size of trees to be removed.

(b)

Location of any proposed improvements on the real property.

(c)

Any additional information that the Planning Board may deem necessary for evaluation of the application.

C.

The determinations of the Planning Board pursuant to this section shall be based upon the following criteria:

(1)

The condition of the trees with respect to disease, hazard, proximity to existing or proposed structures and interference with utility services.

(2)

The effect of the removal on ecological systems.

(3)

The effect of the removal on aesthetic values on the applicant's property and surrounding properties.

D.

Upon submission of a completed application and other required information and payment of all required fees and written approval of the Planning Board, a permit will be granted.

E.

Photographs of the current property showing all trees that exist must be presented to the Building Inspector and if a hearing is to be held by the Planning Board, said photographs are to be presented as well.

§ 112-12 **Replacement of trees; withholding of certificates.**

A.

The Building Inspector may require the planting of one or more trees of the same species or an agreed upon alternate species of trees, which are not less than 1.25 times the height of the tree to be removed, unless otherwise approved by the Planning Board as a condition for the issuance of a permit for removal. The location for planting of the replacement trees shall be agreed upon between the applicant and the Planning Board prior to issuance of a permit for removal.

B.

In the event that any tree is removed, substantially altered, or destroyed without the prior issuance of a permit pursuant to the provisions of this article, other than in an emergency situation in which the removal, substantial alteration, or destruction of any tree is necessary to prevent imminent danger to human life or to property, the following shall apply:

(1)

For each tree less than 25 feet in height, the owner shall plant not less than one and not more than 4 new trees which shall have a total height, above grade after planting, equal to but not less than 1.5 times the height of the tree that was removed, substantially altered or destroyed. The number, type, and size of such trees shall be reviewed and ruled upon by the Planning Board. Any trees planted pursuant to the provisions of this subdivision shall be maintained in good condition and, for a period of ten years from the date of the planting, and if they become unhealthy or die, in the discretion of the Planning Board, they shall be replaced as directed by the Planning Board.

(2)

For each tree 25 feet or more in height, but less than 50 feet in height, the owner shall plant not less than one and not more than 5 new trees which shall have a total height, above grade after planting, equal to not less than 1.5 times the height of the tree that was removed, substantially altered or destroyed. The number, type, and size of such trees shall be reviewed and ruled upon by the Planning Board. Any trees planted pursuant to the provisions of this subdivision shall be maintained in good condition and, for a period of ten years from the date of the planting, and if they become unhealthy or die, in the discretion of the Planning Board, they shall be replaced.

(3)

For each tree 50 feet or more in height, the owner shall plant not less than a number of new trees, each tree being not less than 15 feet in height after planting, which shall have a total height, above grade after planting, equal to not less than 1.5 times the height of the tree that was removed, substantially altered, or destroyed. The number, type, and size of such trees shall be reviewed and ruled upon by the Planning Board. Any trees planted pursuant to the provisions of this subdivision shall be maintained in good condition and, for a period of ten years from the date of the planting, and if they become unhealthy or die, in the discretion of the Planning Board, they shall be replaced.

(4)

No building permit, certificate of occupancy, certificate of completion, or certificate of approval shall be issued for any building or other structure, or for any other work on any premises wherein one or more trees are required to be planted pursuant to this subsection, until the such trees have been planted pursuant to the direction of the Planning Board.

(5)

Upon the failure of a landowner to comply with the above, the Building Inspector shall stay any open permits and issue a "stop work order" for any construction or renovation until such tree issue is remedied to the satisfaction of the Building Inspector and, if necessary, the Planning Board. Only at such time will the permits and work will be permitted to continue.

C.

The location of the replacement trees required to be planted, as set forth above within this section, shall be on the same property from which the trees that are being replaced had been located.

D.

In the event that the Planning Board shall determine that it is not feasible to plant all of the required replacement trees on the same property as the trees that are being replaced had been located, in lieu of all or a part of such planting, the Planning Board may require the person required to perform such planting to make a payment to the Village's tree replacement and maintenance fund in such amount as is equal to the cost that would have been incurred in the purchase and planting of such replacement trees that are not being purchased and planted. The making of such payment to the Village shall be deemed to satisfy the requirements for the planting of such trees, including, but not limited to, the provisions of Subsection **B** above.

§ 112-13 Appeals.

Any person aggrieved by any determination of the Planning Board in the exercise of the authority granted by this article shall have the right to appeal, in writing, to the Zoning Board of Appeals. Such appeal shall state the reasons for the appeal. The determination of the Zoning Board of Appeals on said appeal shall be final and conclusive.

§ 112-14 Fees.

Any application subject to the provisions of this article shall be accompanied by a fee as determined by the Board of Trustees, including costs, deposits and Insurance.

§ 112-15 Penalties for offenses.

A.

Any person who violates the provisions of this article shall be guilty of a violation and shall be subject to a fine not to exceed \$10,000 for each tree that is removed, substantially altered, or destroyed without the prior issuance of a permit pursuant to the provisions of this article.

B.

In addition to any fine imposed herein, this article may be enforced by civil action, including an injunction.

C.

In addition to any fine imposed herein, any owner of real property upon which a violation of this article has occurred, shall be directed by the Planning Board to replace such tree or trees as provided in **§ 112-12**.

D.

Any owner of real property who fails to replace a tree or trees as directed by the Planning Board pursuant to the provisions of this article, within three months of such direction, unless such time is extended by resolution of the Planning Board, shall be guilty of a violation and shall be subject to a fine not to exceed \$10,000 for each tree that is not so replaced. Each day that such failure to replace such tree or trees shall be deemed a separate and distinct offense. **Any developer or homeowner that violates this section of the**

Village Code may be subject to imprisonment for a period not to exceed fifteen (15) days or both such fine and imprisonment.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2021 of the (County)(City)(Town)(Village) of Incorporated Village of Hewlett Harbor was duly passed by the Board of Trustees on June 10, 2021, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

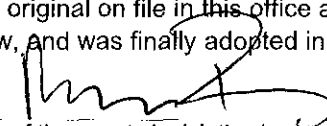
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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 therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.


Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 6/21/21

(Seal)