

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

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.

County City Town Village
(Select one.)

of LEWISBORO NEW YORK

Local Law No. 1 of the year 2024

A local law AMENDING CHAPTER 203 OF THE LEWISBORO TOWN CODE
(Insert Title)
ENTITLED "TREE PRESERVATION"

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of LEWISBORO NY as follows:

SEE ATTACHED LOCAL LAW

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

(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. 1 of 2024 of the (County)(City)(Town)(Village) of LEWISBORO was duly passed by the TOWN OF LEWISBORO TOWN BOARD on AUGUST 12 2024, in accordance with the applicable provisions of law.

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.

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____.

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.

* 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.

PROPOSED LOCAL LAW # 1 OF THE
YEAR 2024

BE IT ENACTED by the Town Board of the Town of Lewisboro, County of Westchester, State of New York as follows:

SECTION 1 : AUTHORITY

This chapter is adopted pursuant to the authority, of Article 2, §10 of the New York State Municipal Home Rule Law.

SECTION 2 : AMENDMENT OF CHAPTER 203

Chapter 203 of the current Code of the Town of Lewisboro entitled “Tree Preservation” is hereby amended as follows:

Chapter 203. TREE PRESERVATION

§ 203-1. Purpose.

As a community of striking natural beauty, with a long tradition of environmental awareness and protection in northeastern Westchester County, The Town of Lewisboro recognizes the inherent value and necessity of preserving and protecting trees in our overwhelmingly residential community. These include the absorption and storage of carbon dioxide and polluting particulates, protection of natural wetlands and drinking water, as well as reduction of storm runoff and erosion on steep slopes. As such, these benefits are both essential and self-evident. However, as a community, we also acknowledge the need to balance the preservation and protection of trees against the rights of individual homeowners and residents to use, enjoy and protect their properties, while being free of unduly burdensome governmental interference and restrictions. As such, the Town of Lewisboro, in an effort to protect the health, safety and welfare of its citizens, finds it necessary to regulate the removal of trees in furtherance of the balance of the interests of preservation and conservation with the rights of property owners, as well as to expressly prohibit the clear cutting of trees on all residential properties, of whatever lot size, as defined herein.

§ 203-2. Definitions.

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

AGRICULTURAL ACTIVITY The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, and using the land for growing agricultural products, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities, or cutting timber for sale.

CLEAR-CUTTING The cutting down and/or removal of live trees from any residential property within the Town of Lewisboro in the absence of any visible evidence of one or more of the following circumstances: (i) such tree being dead, diseased, and/or in a state of irreversible decline or decay, as determined by a professional arborist (or other licensed

tree service professional retained by the property owner or resident); or (ii) posing a substantial risk of endangering life or property if any such tree or trees are/is not cut down and/or removed from the residential property in question. This definition shall not include activity described in §203-4 (B) of this Chapter.

DEAD TREE - A tree that is lifeless. Evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

DIAMETER AT BREAST HEIGHT (DBH) - A standard measurement of trees made at 4 ½ feet above ground level on the uphill side.

INVASIVE SPECIES: A species, not native to an ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.

SPECIMEN TREE – A tree with a dbh of 18 inches or larger, and small native or ornamental flowering trees with a dbh of eight inches or larger.

TREE - Any self-supporting woody plant with an erect perennial trunk or multiple trunks which are, in combination, with a sum of 6 inches dbh.

TREE REMOVAL - Any human act which causes a tree to die.

§ 203-3. Administration and Enforcement.

- A. The Town Board will designate an Approving Authority to administer and enforce this chapter. The Approving Authority may be any individual duly appointed by resolution of the Town Board, including a licensed/certified Arborist and/or the Town Building Inspector. Any Approving Authority shall seek the advice and recommendation of the Wetlands Inspector, or any licensed/certified Arborist engaged by the Town Board (as may be applicable) for purposes of reviewing any application seeking issuance of a permit pursuant to the Chapter. Any contractor performing services pursuant to any permit issued under this Chapter shall be duly licensed for such services by the County of Westchester.
- B. The Approving Authority shall:
- (1) Consult with any other experts as deemed necessary; including but not limited to the individuals set forth in subsection (A) above as required to administer this ordinance.
 - (2) Receive and keep accurate records of tree removal permit applications.
 - (3) Inspect the trees described in each application based on standards for granting permits described herein, both before and after removal takes place.
 - (4) Approve, with conditions, or deny tree removal permit applications according to the standards in this chapter, giving reasons for denial and specifying any conditions for such tree removal as specified below.

- (5) Carry out such related duties as may be specified from time to time by the Town Board.

§ 203-4. Permit Required.

- A. A tree removal permit shall be required prior to removal of any of the following on the homeowner's property:
 - (1) Any tree within any wetland or wetland buffer as defined in Chapter 217 of the Code of the Town of Lewisboro.
 - (2) Any tree on a slope exceeding a grade of 15%.
 - (3) Any tree removal which would be considered "Clear-Cutting" as defined within this Chapter.
 - (4) Any specimen tree.
 - (5) Any tree designated by the New York State Department of Environmental Conservation ("NYSDEC") as a protected native plant.
 - (6) Any tree removal in a Special Character Overlay District as defined in §220-31.
- B. Exceptions. No tree removal permit is required for the removal of any of the following on the owner's property:
 - (1) Tree removal from any residential property within the Town of Lewisboro which involves, or concerns, a tree (or trees) located within sufficient proximity of a dwelling (up to a maximum of 100 feet) that it would reach the dwelling if it were to fall due to natural causes.
 - (2) Tree removal of any tree which is dead, diseased, and/or in a state of irreversible decline or decay, as determined by a professional arborist (or other licensed tree service professional retained by the property owner or resident) or which is otherwise posing a substantial risk of endangering life or property if any such tree or trees are not cut down and/or removed from the residential property in question.
 - (3) Tree removal 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 building permit shall have been approved by the Building Inspector. Any such building permit application shall include a listing or inventory of trees proposed for removal. The building inspector shall have the discretion to limit the removal of trees to those which are deemed essential to construction.

(4) The removal of a maximum of no more than 3 (three) trees, of any kind, type or diameter from any portion of any residential property within a calendar year which do not otherwise require a permit under Section 203-4(A) herein. The foregoing quantity shall be exclusive of any tree removal as allowed defined in subsections (1), (2) and (3) herein as well as tree removal as necessary to control forest fires during such fires.

(5) Tree removal as necessary to maintain town, county, state or utility rights-of-way, provided that such removal is conducted according to lawful easements, statutory requirements and/or franchise agreements.

(6) Tree removal directed by the NYSDEC for control of invasive species or pest control provided that the agency files with the Approving Authority a plan showing the areas of removal before commencing such operations, except when required emergency removal makes such filing impractical.

(7) Tree removal which is part of a forest management plan that has been filed and approved by the NYSDEC or any other agency having jurisdiction.

(8) Trees that are removed to enable agricultural activity as defined in this chapter.

(9) For Special Character Districts, the exceptions as stated in Section 203-4 B(1) and B(2) should also apply for the safety of the homeowner.

C. Standards of Review. In making its determination to grant, deny or grant with conditions a tree removal permit under this chapter, the Approving Authority shall consider the following factors:

(1) Whether the removal will have a significant adverse impact on ecological systems, including erosion potential and wildlife habitat.

(2) Whether the removal will have a significant adverse impact on other properties or roadways, including an impact on screening or drainage.

(3) Whether removal of a tree on a steep slope or very steep slope is likely to impact the stability or runoff from that slope and have an adverse impact on stormwater pollution or require additional stormwater management practices.

(4) Whether the tree is a specimen tree and, in the discretion of the Approving Authority, alternatives exist that would achieve the objectives of the applicant without removal of the specimen tree.

(5) Whether the tree is designated by the NYSDEC as a protected native plant.

- (6) Whether possible or practicable alternatives exist.
 - (7) Whether a replacement tree plan is provided.
- D. Approvals granted by the Planning Board shall be deemed tree removal permits when tree removal or preservation is specifically proposed in conjunction with an approval application submitted to such agencies. These agencies shall apply the criteria, procedures and standards of this chapter and shall consider how tree removal might be reduced by changes to the application being considered. The opinion of the CAC and the Approving Authority may be sought to assist such agencies in their determinations. These agencies shall record on their determinations the specific tree removal and remediation which they approve.
- E. Any application for tree removal in a Special Character Overlay District as defined in §220-31 of Lewisboro Town Code shall be referred to Architecture and Community Appearance Review Council for report and recommendation.

§ 203-5. Permit Application

- A. Except when tree removal is being proposed as part of an application to the Planning Board, the applicant shall file with the Approval Authority three (3) copies of a tree removal permit application in the form required by the Approval Authority. The application shall include:
- (1) Name and address of the applicant.
 - (2) Name and address of the property owner, if different.
 - (3) Address and Town Tax Map designation of the property.
 - (4) Purpose of tree removal.
 - (5) Color photographs showing the areas and environment where trees are proposed to be removed, with sufficient detail to identify the remaining trees in the area after the work is completed.
 - (6) A sketch (or survey to be submitted by the applicant if subdivision or site plan is involved) of the boundaries of subject property and that section to be disturbed, showing the number, location and common name of all trees to be removed, the tree caliper and the distance of each from nearby structures, roads, or other landmarks which will enable the trees to be easily identified. Access roads, skid roads and loading areas must also be identified.
 - (7) If known, the identification of a wetland boundary and buffer boundary, or the completion of a clearance form as defined in Chapter 217, Wetlands and Watercourses.

- (8) Proof of insurance as required by the Approval Authority for applicant or the agent/ contractor submitting such application, which evidences existence of general liability insurance with minimum limits of \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage as well as NY State Workers Compensation insurance and NY State Disability insurance as may be applicable.

- B. Submission of a tree removal permit application shall constitute permission for the Approving Authority and/or duly authorized employees and/or agents of the Town to enter upon the subject property described in the application, at reasonable times, with prior notice to and agreement by the applicant, which agreement shall not be unreasonably withheld, to carry out the inspections required in this chapter and to otherwise enforce its provisions.

- C. The Approving Authority shall approve, approve with conditions or deny a tree removal permit application within sixty (60) days after receipt of a complete application. If no action is taken by the Approving Authority within sixty (60) days after receipt of the complete application, it shall be deemed to be approved as submitted.

- D. A tree removal permit shall expire 24 months after it is granted.

§ 203-6. Conditions for Permit Application

The Approving Authority may as a condition of granting a permit:

- A. Regulate the days and hours of removal operations.

- B. Regulate the size and number of trucks and routes used for removal.

- C. Require tree protection, or other mitigation to prevent erosion, provide screening, preserve ecological systems or remediate effects on neighboring properties or roads.

- D. Require the re-planting of replacement trees of a similar or different species or, in the event that the Approving Authority deems it impractical to require re-planting or replacement of trees pursuant to this section, require addition of other vegetative material or fencing or terracing or other similar measures to offset the negative effects of tree removal.

- E. May, in the discretion of the Approving Authority as a condition of permit issuance pursuant to this Chapter, require posting of a performance bond with a minimum term of two years to ensure compliance with this ordinance and other regulations of the Town of Lewisboro.

- F. Require such other safeguards as may be deemed appropriate to minimize the environmental impact of such permitted activity.

§ 203-7. Fees

A tree removal application shall be accompanied by a fee as set forth in the Fee Schedule of the Town of Lewisboro, as may be amended from time to time by resolution of the Town Board.

§ 203-8. Penalties for offenses.

- A. The owner of record of any property on which trees subject to this chapter are removed without the granting of a tree removal permit, or are removed in violation of conditions attached to a tree removal permit, or any person removing or in the process of removing such trees, shall be guilty of a violation of this chapter, which shall be punishable by a fine of no less than \$250.00 or in excess of \$500.00. Each tree removed without a tree removal permit or in violation of the conditions attached to a tree removal permit shall constitute a separate offense.
- B. In addition, the owner of record of any real property which has been determined to be in violation of this Chapter shall be ineligible for receipt of subdivision approval, site plan approval, issuance of a building permit(s), certificate(s) of occupancy, certificate(s) of compliance or zoning board of appeals variance(s) relating to the property(ies) which are in violation of this Chapter, until such time as said violation(s) are deemed cured and any related proceeding in local court terminated as defined in §1.20 of the Criminal Procedure Law. The foregoing provisions for enforcement of the regulations in this chapter are not exclusive, but are in addition to any and all laws applicable thereto.

§ 203-9. Appeals.

Any applicant aggrieved or affected by the determination of the Approving Authority with respect to an application for a tree removal permit may appeal such determination to the Zoning Board of Appeals, stating the reason for such appeal. The Zoning Board of Appeals shall conduct a 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.

SECTION 3 – HOME RULE

Nothing in this Local Law is intended, or shall be construed (a) to limit the home rule authority of the Town under State Law to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.

SECTION 4 – SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Lewisboro hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 5 – EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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

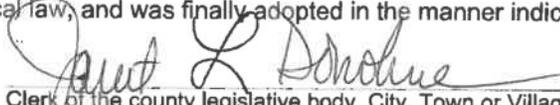
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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: August 13, 2024

(Seal)

