

TEXT OF BILL
Incorporated Village of Sea Cliff
BILL NO. 1-2014

A local law amending Chapter 121 of the Village Code of the Village of Sea Cliff to regulate the preservation and protection of trees in the Village of Sea Cliff.

Section 1. Chapter 121 of the Village Code of the Village of Sea Cliff, entitled “Tree Preservation and Protection”, is amended to read as follows:

ARTICLE I
GENERAL PROVISIONS

§121-101. Short Title.

This chapter shall be known and may be cited as the “Tree Preservation and Protection Law of the Village of Sea Cliff”.

§121-102. Legislative findings and purpose.

The Board of Trustees hereby finds that there is a direct relationship between preservation and planting of trees and associated vegetation in sufficient quantity in the Village of Sea Cliff and the health, safety and welfare of Village residents, and that the Village has an obligation to facilitate the stewardship of air, water, land and living resources, to sustainably protect the environment for the use of this and future generations. Trees and associated vegetation promote natural, scenic, environmental, and aesthetic values, stabilize soil and the hillside, control water pollution by preventing soil erosion and flooding, absorb air pollution, preserve the balance of oxygen in the air, yield microclimatic effects, offer a natural noise barrier, provide a natural habitat for wildlife, provide shade to Village residents, and create a bucolic atmosphere. The removal and destruction of trees in the Village deprives the Village residents of these benefits, disrupts fundamental ecological systems and adversely affects the health, safety and welfare of the residents of the Village. The Board also recognizes that recent weather events, including wind, snow and rain events, have impacted trees on Long Island greatly and that some members of the public have become more concerned about the safety of trees in relation to property protection and the relationship between trees and the hillside. The purpose of this chapter is to strike a balance between property protection and personal safety concerns and prevention of the indiscriminate destruction or removal of trees within the boundaries of the Village and to provide for the replacement of trees that may be destroyed or removed.

ARTICLE II
DEFINITIONS

§121-201. Definitions.

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

ADMINISTRATOR – The Village Administrator and/or his authorized designee.

ANNUALLY or ANNUAL– A one year period commencing on the date of the removal of a Class B or Class C tree.

APPLICANT -Owner, lessee, occupant or contract vendee of real property in the Village, or any agent thereof.

BOARD - The Planning Board of the Village of Sea Cliff.

CERTIFIED ARBORIST – An individual who has obtained knowledge and competency in arboriculture or forestry through an accredited body such as the International Society of Arboriculture (ISA) arborist certification program, the American Society of Consulting Arborists, or the New York State Cooperating Consultant Forester Program, or equivalent program as determined by the Tree Commission.

COMMISSION. The Tree Commission.

DESTROY - Shall include such practices as topping, girdling, trenching near the roots, applying herbicides or pesticides, poisoning, ringing the tree, excessive pruning, damaging, compacting or overburdening the roots, or cutting, in a manner as to bring about, or may reasonably expected to bring about, the ultimate death of such tree, either immediately or within the course of time. Shall also include any Destructive Pruning Practices.

DESTRUCTIVE PRUNING PRACTICES – Pruning of a mature tree in ways that are in violation of Best Practices, as defined by the American National Standards Institute Guidelines for Tree Pruning [ANSI A300, Part 1]. Destructive Pruning Practices including, but not limited to, tree topping, defined as cutting back large diameter branches to stubs, and removal of more than 25% of a tree’s canopy.

DIAMETER - The measurement of the diameter of a tree taken at a point 4.5 feet above ground level. If a tree splits into multiple trunks below such point, then the measurement is taken at the most narrow point beneath the split.

EMERGENCY - Any condition in which the failure to remove a tree, or any portion thereof, shall represent an imminent danger to the health, safety and general welfare of Village residents or property in the Village.

GROUND LEVEL - The average of the ground level at the base of a Tree.

HABITAT - The natural growing characteristics of any Tree which includes branch spread and distribution, branch height above ground and root spread and distribution below ground.

HERITAGE TREE – A Tree that has such unique value or importance as to be considered irreplaceable. Heritage Trees shall be set forth in a list adopted and maintained by the Village based on criteria adopted by resolution of the Board of Trustees, and may include Trees that are important based on their location, rarity, size, and/or aesthetic, botanical, ecological and/or historical value. A Heritage Tree may be an individual Tree located in a particular location or a species of Tree.

HILLSIDE – An area having a slope of ten percent (10%) or greater.

PERSON – Any individual, firm, partnership, association, corporation, company, public agency, public utility, organization or entity of any kind, or agent thereof.

PREFERRED SPECIES LIST – A list of tree or shrub species for various sites and conditions, including land characteristics, existence of utility lines or facilities, proximity to buildings, structures or paved surfaces, maintained by the Village.

SUBSTANTIAL ALTERATION – Any cutting or drastic pruning or elevating the habitat of a Tree that 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 top and side branches and limbs (commonly called “topping”).

SUPERINTENDENT – The Superintendent of Buildings of the Village, or his authorized designee.

TREE - A woody perennial plant, typically having an elongated trunk, or trunks, that bear lateral branches and leaves at a distance from the ground.

ARTICLE III TREE COMMISSION

§121-301. Tree Commission.

A. The Commission shall consist of three members, each appointed by the Mayor, subject to the approval of the Board of Trustees. The members of the Commission shall serve without compensation. The Commission shall include three residents of the Village. The term of each resident member shall be a one year term, each commencing at 12 noon of the first Monday in April. Any Commission member appointed at any time other than as aforesaid shall be appointed for a term set to expire on the immediately forthcoming first Monday in April at 11:59am. If a vacancy occurs during the term of any member, a successor may be appointed, and such appointment shall be for the unexpired portion of the member’s existing term.

B. The Mayor shall appoint one of the Commission members to serve as Chair during the term of member’s term. In the absence of the Chair, the Commission shall designate an acting chair to serve as chair during a meeting at which the Chair is unavailable.

C. The Mayor may appoint, subject to approval of the Board of Trustees, up to two (2) alternate members who may serve in the absence of a Commission member. The alternate members shall be Village residents and shall serve without compensation. The terms of each alternate member shall be for a one year period commencing at 12 noon of the first Monday in April. The alternate members shall be designated respectively as First Alternate Member and Second Alternate Member. In the absence of a Commission member, the First Alternate Member, if available, may serve in the place of the absent member, and if the First Alternate Member is not available or two (2) Commission members are not available, the Second Alternate Member shall serve in the place of an absent member.

D. A member of the Board of Trustees shall serve as a liaison to the Commission and may attend meetings of the Commission. The Superintendent and/or Administrator also may attend meetings of the Commission, and if requested by the Commission, may offer advice concerning any matter within the jurisdiction of the Commission.

E. The Commission shall hold regular meetings at the call of the Chair.

§121-302. Power and Authority.

The Commission shall have the following powers and authority.

A. Tree Removal Permit Applications. The Commission shall review all Tree removal applications in accordance with the review procedure provided herein. The Commission shall either grant or deny the application in accordance with the standards provided herein. No Tree Removal Permit application shall be required for Trees in the public right-of-way to be removed by the Village. Notwithstanding that no application is required, the Village, after consultation with the Commission, may, by resolution, adopt policy guidelines for the care and maintenance of Village Trees.

B. Upon a written request, by the Superintendent or the Administrator, the Commission may provide advice concerning the replacement of any Trees in the Village, including any Trees in the right-of-way.

C. Upon a written request by the Board of Trustees, the Planning Board or the Zoning Board of Appeals, the Commission may provide advice concerning the removal or planting of any Tree.

D. The Village may maintain and update a Preferred Species List. The Commission may provide the Village with recommendations for inclusion on the Preferred Species List.

**ARTICLE IV
CLASSIFICATION OF TREES**

§121-401. Classification.

Trees shall be classified as follows, and the requirements pertaining to each class of Tree shall be as provided in Articles V, VI and VII herein.

- A. **Class A.** Trees with a Diameter of no greater than 10 inches.
- B. **Class B.** Trees with a Diameter of more than 10 inches and less than 20 inches.
- C. **Class C.** Trees with a Diameter of 20 inches or more and Trees, regardless of Diameter, designated as Heritage Trees.

**ARTICLE V
TREE REMOVAL GUIDELINES**

§121-501. No notice to Village and no permit application required.

Any person, who owns property in the Village, may remove **any Class A Tree** that is located solely on the person's property. Such removal may be completed without providing either notice to the Village or making application to the Village for such removal.

§121-502. Notice to the Village, but no permit application required.

Subject to the notice requirement set forth in section 121-601, any person, who owns property in the Village, may remove **annually up to three (3) Class B Trees** that are located solely on the person's property. Such removal is subject only to the notice requirement set forth in section 121-601, and shall not be subject to making an application to the Village for such removal.

§121-503. Application required.

No person may remove (i) **a Class C tree** or (ii) **annually four (4) or more Class B trees**, without first applying for, and obtaining a Tree Removal Permit, in accordance with the procedure set forth in Article VI of this Chapter. For Class B Trees, a permit is not required for the first three (3) Trees removed in an annual period.

**ARTICLE VI
NOTICE REQUIREMENTS**

§121-601. A person may remove up to three (3) Class B Trees subject to the provisions of §121-502 after first providing notice to the Village in accordance with this section. The Village website will contain a form for such purpose, and prior to the removal of any such Tree, the person removing the Tree shall complete the notice form, and submit the form online, by mail or in person to Village Hall. Completion of the notice form on the Village

website shall be deemed sufficient for compliance with the notice provisions in this Chapter. The notice form also may be filed by mail or in person with the Village. One such form may be used for all Trees proposed to be removed at the same time. This notice provision will provide the Village with an opportunity to continue to maintain an inventory of trees in the Village.

ARTICLE VII TREE REMOVAL PERMIT AND TREE REPLACEMENT

§121-701. Tree Removal Permit.

- A. Except as otherwise provided in this Chapter, no person shall perform, or cause to be performed the removal, destruction, or substantial alteration of a Tree that is subject to permit removal requirements pursuant to section 121-503, except in compliance with this Chapter and without first obtaining a permit from the Commission as hereinafter prescribed. No permit shall issue for any activity that is a Destructive Pruning Practice.
- B. The application shall be made on such forms as may be prescribed by the Commission or the Superintendent and shall include, but not be limited to, the following:
 - 1. The name and address of the applicant.
 - 2. The purpose of the proposed removal, destruction or substantial alteration.
 - 3. A sketch or plan depicting the location of the property (including all cross streets) that contains information sufficient to identify the exact Tree(s) that are identified for removal on the application. Such information may include references to buildings, structures, other Trees and/or roadway locations. Additionally, applicants must mark the Trees proposed for removal with tape, ribbon or a large tag before the site visit by the Commission members.
 - 4. The name of the tree company to perform the work under the permit.
 - 5. Written consent of the owner or owners of the real property if the applicant is not the owner.
 - 6. Any additional information that the Commission may deem necessary for evaluation of the application by the Commission.
- C. The application shall be filed with the building department and upon receipt of an application to remove a Tree, the building department shall refer the application to the Commission for its review in accordance with this Chapter.
- D. Criteria for Commission Determination.

The decision of the Commission will be based on the following criteria:

1. The condition of the Tree or Trees the applicant seeks to remove with respect to disease and danger of falling, proximity to existing or proposed structures and interference with utility services.
2. The necessity of the removal or alteration of the Tree or Trees.
3. The potential for impact of the removal upon ecological systems, including any impact on the Hillside, if the Tree or Trees are located on the Hillside or impact a Hillside.
4. The character established at the proposed site of removal with respect to existing vegetation management, impact on storm-water runoff, and/or impact on the stability of the Hillside in the area of the Tree or Trees.
5. The impact of any removal or alteration on the existing screening of any public street bordering the real property that is the subject of the application.

E. Tree Removal Permit.

If the Commission determines in writing that a permit should be issued, within ten (10) business days after receiving such written notification from the Commission, the Superintendent shall issue such permit subject to any conditions recommended by the Commission, including provision for replanting as provided in section 121-702 herein. Such permit shall be valid for period of time as determined by the Board of Trustees from time to time, as adopted by resolution of the Board of Trustees.

F. Fees.

1. The application fee shall be as prescribed from time to time by resolution of the Board of Trustees, and may not be waived except on application to, and grant by, the Board of Trustees.
2. The Commission, in making a determination concerning the removal of any Trees on real property in the Village may, upon notice to the applicant, obtain the services of a professional Certified Arborist or landscape architect regarding the advisability of removal or the viability of the existing Tree. Unless waived by the Board of Trustees upon an application by the applicant for such waiver, the cost of this professional evaluation shall be borne by the applicant. No such professional review shall commence until the applicant submits a sum to the building department sufficient to pay for the cost of such professional review, in an amount to be determined by the Superintendent in each instance.

§121-702. Tree Replanting Program.

- A. For each Tree removed pursuant to a permit as provided in section 121-701, the applicant either shall replant a Tree on the property from which the permitted Tree is being removed or shall deposit a sum in the Village Tree Releaf Fund in a sum as prescribed from time to time by resolution of the Board of Trustees, in accordance with the provisions in this Chapter.
- B. Except where otherwise authorized by the Commission, any Tree replanted pursuant to this section shall be subject to the following requirements:
1. Be of a size and species as approved by the Commission;
 2. Be planted in a location approved by the Commission;
 3. Be balled and burlapped and shall not be less than two inches in diameter nor less than 8 feet high. Trees shall be nursery-grown, and a nursery inspection certificate shall be available covering all trees;
 4. Be planted using the best current, commercial practices for successful tree planting;
 5. Be consistent with the Preferred Species List; and
 6. any other reasonable requirements of the Commission.
- C. Upon the planting of the Tree or Trees, the applicant shall request that the Tree Commission certify that the Tree or Trees have been planted. Failure to obtain such certification within the time provided in the permit shall be deemed a violation of this Chapter and shall be subject to the penalties provided in this Chapter.
- D. An applicant may request a waiver of these requirements from the Board of Trustees by submitting in writing the request and setting forth the reasons for the request. The Board of Trustees may consider such waiver application at any scheduled meeting of the Board, and may waive the requirements in full or in part.

§121-703. Emergency Tree Removal.

In the event of an Emergency, all necessary and proper action may be taken with regard to the removal of Trees by a resident to ensure the safeguarding of family and property. In this event, there shall be no fee charged for the removal of any Tree subject to the provisions of Section 121-503 or Article VII herein, but the replacement provisions set forth in sections 121-702 shall still apply. The burden shall be on the resident to demonstrate to the building

department that an Emergency existed, that appropriate, measured and necessary action was taken and that professional and expert services were utilized. Failure to show an Emergency existed and that fair, necessary and appropriate action was taken will subject the action taken to any applicable requirements in the Village Code. In determining whether an Emergency exists, in addition to the general considerations set forth in this section, the Board of Trustees may adopt, from time to time, guidelines applicable to a determination as to whether the removal of a Tree constitutes an Emergency.

§121-704. Removal or Alteration of Trees Endangering the Public.

A. Private Property. Any tree growing on real property, which, in the opinion of the Superintendent, is endangering or constitutes a danger to a public street or public places or the members of the public using the same, or which in any way endangers the usefulness of a public utility or sewer, or which by reason of infestation or blight endangers other trees in the Village, shall be removed or the habitat thereof altered by the owner of the real property as directed in writing by the Superintendent. If the property owner fails to comply with the written directive of the Superintendent within the time specified by the Superintendent, the Village may then take the action directed by the Superintendent and assess the cost thereof against the property owner. Such assessed costs shall be a lien against the real property, and shall be collected by the Village in the same manner as a real estate tax or assessment. The directive from the Superintendent shall clearly state the source of the danger, the action to be taken, the date by which such action must be taken and shall be served on the owner of the real property personally or by certified or registered mail, addressed to said owner at the last known address for said owner on the tax records of the Village. If served by mail, the notice shall be deemed received three days after the notice is deposited in a depository maintained by the United States Postal Service.

**ARTICLE VIII
HERITAGE TREES**

§121-801. The Village shall maintain a list of Trees deemed Heritage Trees. A Tree is eligible for inclusion on the list of Heritage Trees if it meets the qualifications for such designation as may be adopted, and amended, from time to time by resolution of the Board of Trustees. The Commission may provide the Board of Trustees with information to utilize in creating such qualifications, and also may recommend inclusion of Trees to be deemed Heritage Trees.

§121-802. No Tree shall be placed on the list of Heritage Trees except in accordance with this Article.

§121-803. Any resident may nominate a Tree on property owned by such person or any Tree on public property for inclusion on the list of Heritage Trees. To nominate a Tree, a resident must submit in writing to the building department a request for nomination

providing in such request the specific location of the Tree and setting forth the reason for such nomination, including whether the Tree meets the qualifications for nomination.

§121-804. Upon receipt of a nomination request, the building department shall determine if the Tree is located on private property or public property. If the Tree is located on private property, the building department may request confirmation from the resident that the resident owns the private property. Upon confirmation of ownership, the building department shall forward the request for Heritage Tree designation to the Commission.

§121-805. If the Tree Commission determines that a Tree meets the qualifications for inclusion on the list of Heritage Trees it may recommend to the Board of Trustees that the Tree be added to the Heritage Tree list by notifying the Village Clerk in writing and providing sufficient detail to the Village Clerk as to the specific Tree so recommended. Utilizing the qualifications for designation of a Tree as a Heritage Tree, the Board of Trustees shall then determine whether to designate the Tree as a Heritage Tree.

§121-806. Any Tree on private property that is designated as a Heritage Tree, in addition to being set forth on the list of Trees deemed Heritage Trees, shall be identified in the real property file for such private property.

ARTICLE IX LAND DEVELOPMENT

§121-901. Land Development Procedures.

A. Planning Board Review.

(1) Simultaneously with the submission to the Planning Board for approval of any site plan or subdivision plan, an applicant shall submit four sets of the plan and a landscape plan showing all Class B and Class C Trees on the real property and any public or private right-of-way adjoining the real property and indicating thereon:

- a. Existing Class B and Class C Trees, identifying the size and species.
- b. Identification of such Trees proposed to be removed or retained.
- c. All such diseased, dead or damaged Trees.
- d. The size, species and planting method of all proposed plans for replanting, replacement or remediation.
- e. Any proposed grade changes.

(2) The removal of any Tree that otherwise would be subject to the notice or permit requirements set forth in Article VI or VII of this Chapter, may be permitted in accordance with site plan or subdivision approval and will not also require notice pursuant to Article VI or permit approval pursuant to Article VII.

B. Street Trees.

If the site plan or subdivision plan does not propose, or depict existing, sidewalks or curbs, the applicant shall plant shade trees in the unpaved area of the right-of-way, in locations to be determined by the Superintendent.

C. Restoration Fees.

For Class C and four (4) or more Class B Trees to be removed due to new construction that are not subject to Article VII herein, a fee, as determined from time to time by resolution of the Board of Trustees shall be paid by the applicant, and deposited into the Village Tree Releaf Fund.

D. Inspection.

After (a) the granting of site plan approval and prior to issuance of a certificate of occupancy by the building department, or (b) the granting of subdivision approval and execution of a subdivision map by the Planning Board Chair, the Superintendent shall inspect the real property to determine whether all Trees proposed to be preserved shall in fact remain in existence. If the Superintendent determines that any Tree that was to be preserved has been removed, damaged, destroyed, or substantially altered, the applicant shall be required to replace the Tree or Trees with trees of equal kind to the satisfaction of the Planning Board. The Planning Board may make such determination at any meeting of the Board without the requirement that a public hearing be held for such purpose.

§121-902. Applicant's Responsibility.

- A.** Where the Planning Board has granted final approval to a subdivision or site plan that contains as a condition of approval the preservation, planting and/or replacement of Trees, the applicant shall be responsible for the preservation of the Trees so designated in the applicant's plans and the planting or replacement of Trees pursuant to this Chapter.
- B.** Where an applicant cannot timely plant trees in accordance with this chapter, due to the season, weather conditions or other circumstances that make it impossible to perform such planting, the applicant may deposit in escrow with the Village Clerk an amount to be determined by the Planning Board to cover the cost of purchasing and planting the trees.

§121-903. Tree Specifications.

- A.** Trees to be planted as required by a subdivision or site plan approval shall be balled and burlapped and shall not be less than two inches in diameter, nor less than 8 feet high. Trees shall be nursery-grown, and planted using the best current, commercial practices for successful tree planting.

- B.** All debris associated with the planting shall be removed from the property. The property must be left in a neat and orderly condition in accordance with good and accepted planting practice.
- C.** At least three days prior to the start of planting, notice of the date of such planting shall be given to the Superintendent.
- D.** All planting work shall be subject to the general supervision and approval of the Planning Board and Superintendent.
- E.** Any other requirements of the Superintendent.

**ARTICLE X
VILLAGE TREE RELEAF FUND**

§121-1001. Village Tree Releaf Fund.

The Village Treasurer is hereby directed to establish a separate line item under the Village's general fund which will be designated as the Village Tree Releaf Fund. All permit fees and other fees collected under this Chapter shall be delivered to the Village Treasurer and segregated into said separate line item of the general fund. The money in the Village Tree Releaf Fund may be used for the planting and maintaining of trees by the Village or the education of the public concerning tree preservation and safety, as directed by the Board of Trustees in consultation with the Commission.

**ARTICLE XI
APPEALS/PENALTIES**

§121-1101. Appeals.

Any person aggrieved by any act or determination of the Commission or the building department shall have the right to appeal to the Zoning Board of Appeals. Such appeal must be taken within 60 days after the filing of the determination, specifying the grounds thereof and the relief sought.

§121-1102. Penalties for offenses.

Any person who violates any provision of this chapter, fails to comply with any conditions imposed by the Superintendent, Planning Board or Board of Trustees, or fails to comply with any written directive made pursuant to this Chapter, or causes any of the aforesaid violations, shall be deemed guilty of a violation, and upon conviction thereof, shall be subject to a fine as follows:

- A. For removing, destroying or substantially altering the habitat of a single Tree, a minimum fine of \$500, with a maximum fine not to exceed \$2,000.
- B. Where more than one Tree is removed, destroyed or substantially altered in violation of any provision of this Chapter, within a one year period, the fines shall be as follows:
 - 1. For the first such Tree, a minimum fine of \$500, with a maximum fine not to exceed \$2,000;
 - 2. For the second such Tree, a minimum fine of \$2,500, with a maximum fine not to exceed \$5,000;
 - 3. For three or more such Trees, a minimum fine of \$3,000 and a maximum fine of \$5,000 for each Tree in excess of two trees.
- C. A tree company or any person not an owner of real property who performs an act in violation of this chapter shall also be subject to the same fine schedules provided in subsections A and B of this section. Such company or person shall be subject to the fines provided in subsection B of this section regardless of the location of the real property where the Trees are or were located.
- D. For each Tree not replanted as required by this chapter, a fine of \$5,000.

§121-1103. Suspension of permit or approval.

- A. If a real property owner or any other person performing work with the consent, expressed or implied, of the real property owner shall violate any provision or condition of any permit or other approval of an application from any department, board, or Commission of the Village by removing, destroying, or substantially altering the habitat of a Tree, or by suffering, permitting, or allowing the removal, destruction, or substantial alteration of the habitat of a Tree on such real property, such permit or other approval shall be suspended. Such suspension shall continue and no further action shall be taken pursuant to such approval, until such person shall apply to the department, board, and/or Commission which granted such permit or approval for modifications thereof based upon the removal, destruction or substantial alteration of the habit of such Tree or Trees. Upon such application, such department, board, and/or Commission may modify such permit or approval by implementing such conditions, including, but not limited to, the requirement that one or more new trees, with a diameter and height as determined by the Commission, shall be planted to replace the removed Tree(s) and that the new Tree(s) shall be maintained for a specific period of time, not to exceed five years, or such other condition or conditions as such department, board and/or Commission might deem appropriate. Such conditions also may include a prohibition of any further work on the such real property until the replacement tree or trees have been planted and that a declaration or covenants and restrictions be recorded by the

owner of the real property, running with the land, to assure that such conditions with regard to such replacement trees shall be enforceable against all future owners.

- B. Notwithstanding anything to the contrary in this Chapter, the Superintendent shall have the authority to authorize and/or direct that the real property owner and/or any other person performing work with the consent, expressed or implied, of the real property owner take such actions as in the sole discretion of the Superintendent are reasonable and/or necessary to maintain the real property in a safe condition and to assure that all relevant stormwater, sediment and erosion control, and Tree protection measures are implemented and maintained, and that such other actions, as the Superintendent may determine to be in the best interests of the Village are implemented and maintained until such application has been made, a decision thereon has been rendered by such department, board, and/or commission, and the additional conditions, if any, of such department, board or commission, has been implemented.

Section 2. This local law shall take effect in accordance with Section 27 of the Municipal Home Rule Law.