

## Proposed Update to Tree Ordinance - CAC & FOSP Compilation per Request of Village Board on June 14, 2016

### CAC Recommendations<sup>1</sup>

#### Background

In 2013 the Conservation Advisory Council (CAC) examined Scarsdale's tree ordinance and found that it does little to protect or promote the Village's tree canopy, which stands at about 50%. The CAC also found widespread community concern over lot redevelopment, which is often accompanied by the "clear cutting" of existing trees with insufficient replacement.

#### 2014 refinement

In 2014 the CAC refined its recommendations to the following:

- The Village actively maintain its 50% tree canopy coverage.

For projects requiring approval by any Board:

- All projects requiring land use board approval must either attain the 50% canopy goal (at maturity) or pay an assessment for any shortfall.
- Preconstruction tree surveys should be conducted by a certified arborist or landscape architect.
- A tree replacement plan should be prepared by a certified arborist or landscape architect.
- Tree protection should be provided during construction in accordance with ANSI standards.
- "Street" trees should be required for all site redevelopment.

For permits:

- A permit should be required for any tree (> 6" DBH) (>4" DBH) removed by a homeowner.
- Neighbors should be notified of substantial (> 12" DBH) tree removals. **(FOSP: provision may create enforcement and due process issues, considers "substantial" should be defined as equal to or > 4"DBH)**

For street tree planting:

- Recent FOSP tree ordinance guidance should be adopted, particularly with respect to the species of trees being chosen for street tree planting.

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<sup>1</sup> FOSP recommendations are indicated in red and blue markups.

## 2014-2015 refinement

A subsequent CAC presentation reaffirmed these recommendations; however, further discussion among the CAC and Trustees indicated that an assessment fee for canopy shortfalls on properties came with complications that currently are too great to resolve, for example, how to handle properties having greater than 50% canopy coverage.

## Current Recommendations

In this document we provide concrete steps toward implementation of CAC recommendations, removing only the canopy assessment fee.

### The Village actively maintain its canopy coverage

The CAC recommends that the Village commit to maintenance of its 50% canopy coverage through regular surveillance. Given the age of the Village's trees, there is widespread concern that its canopy will indeed decline over the coming years. Should a canopy decline be detected, restorative actions can then be considered. The CAC can perform these regular canopy inspections through use of probabilistic aerial surveys, as it used to establish Scarsdale's current canopy level.

The CAC recommends that the BOT adopt a resolution/proclamation encouraging maintenance of Scarsdale's tree canopy and potentially putting it on a footing for further action. These considerations may be included:

*Whereas*

*A treasured aspect of Scarsdale is its trees,*

*Trees mitigate and absorb storm water,*

*Trees stabilize soil, reducing erosion and storm water runoff,*

*Tree replenish our air,*

*Trees provide and promote habitat for birds and animals,*

*Trees cool our homes in summer and protect them from winds in winter,*

*Tree canopy is an important indicator of the health of a municipal forest,*

*Scarsdale, a proud member of Tree Cities USA, resolves that*

*Tree protection standards during development help preserve existing tree stock*

*New and existing properties, as well as Village properties, should strive to maintain the Village's existing tree canopy, which has been found to stand at approximately 50% overall.*

*The Village's canopy shall henceforth be periodically monitored and further action taken should a decline in canopy levels be found.*

### **For street tree planting**

For selecting species of trees chosen for street tree planting, the CAC encourages the Village to refer to a list maintained by the Friends of Scarsdale Parks or to its recommended sources.

### **All other recommendations**

The remaining recommendations are implemented as draft changes to the Village's tree code (see Appendix). For ease of reference, code changes will be indexed to the numbered list below:

1. Neighbors be notified of substantial (> 12" DBH) **(if adopted, > 4" DBH)** tree removals.
2. Permitting for any tree > 6" DBH removed by a homeowner.
3. "Street" trees required for all site redevelopment.
4. Preconstruction tree surveys conducted by an ISA-certified landscape architect.
5. Tree replacement plan prepared by an ISA-certified landscape architect.
6. Tree protection during construction according to ANSI standards.

## **Appendix 1 – Changes to Code Section 281**

Code changes only are shown here. NOTES ON ANNOTATION:

- Underlining or red text highlights changes where neighboring text has been left as is from what currently exists.
- When underling or red text is not used in a passage, assume it is entirely new.

### **Neighbors be notified of substantial (> 12" DBH) (if adopted, > 4" DBH) tree removals**

§ 281-3.F - Except when a tree is removed under an actual or ongoing emergency, removal of a tree that is 12 inches DBH or greater **(if adopted, 4 inches DBH or greater)** must be preceded with a two week period of public comment including notice posted within plain view of the closest street and a mailing at landowner expense to all adjacent neighbors.

§ 281-4.B.9 – [In making a determination to grant a permit under this article for the removal of any tree, the Village Engineer's consideration shall include, but is not limited to, the following:] In the case of trees greater than 12 inches **DBH (if adopted, > 4" DBH)**, public comment received during the permit waiting period.

**(FOSP: CAC provision may create enforcement and due process issues; in any event "substantial" should be defined as > 4"DBH)**

### **Permitting for any tree > 6" DBH (if adopted, > 4" DBH) removed by a homeowner**

§ 281-4.A.1 – The removal of one or more trees exceeding six inches DBH (**4 inches DBH**) per lot per 12 months, except as provided under § [281-3C](#), [D](#) and/or [E](#).

### **“Street” trees required for all site redevelopment**

§ 281-18. Planting in public places

D. Projects requiring approval by the Board of Architectural Review shall include either new trees planted or existing trees protected within 10 feet on either side of the public ROW. The total number and species of trees planted or protected shall be specified in a landscape plan subject to approval by the Board of Architectural Review. Planting or protection shall be carried out at landowner expense.

E. Trees planted within 10 feet on either side of the public ROW shall be drawn from the Village's approved species list and further subject to approval by the Village Engineer based on site circumstances such as overhead or underground utilities, traffic visibility, and so forth.

### **Preconstruction tree surveys conducted by an ISA-certified landscape architect**

§ 281-25.A When inventory, plans and bond agreements required.

Applications for subdivision or site plan approval or for activities in a freshwater wetland controlled area before the Planning Board; for special permits for tennis courts, swimming pools and other buildings before the Board of Appeals; and for permit approval before the Board of Architectural Review shall be accompanied by:

(1) An inventory site plan by an ISA-certified Arborist or NYS licensed landscape architect showing all vegetation and projected canopy at maturity of all trees on the property having a trunk diameter of four inches or more at a point 54 inches above the ground, except that in applications for site plan approval, wetland permits or for preliminary approval for subdivision, the Planning Board may permit inventories showing only trees having a diameter of 10 inches or more or may defer the inventory requirement in subdivision applications for which no development is proposed or for which site plan approval is also required.

### **Tree replacement plan prepared by an ISA-certified landscape architect**

§ 281-25. (3) A tree replacement plan, if required. The tree replacement plan shall be prepared by an ISA-certified Arborist or NYS licensed landscape architect showing projected canopy at maturity for the tree replacement plan.

### **Tree protection during construction according to ANSI standards**

§ 281-25. (2) A tree preservation plan showing trees which are to be preserved. Methods for tree preservation in areas affected by construction activities shall meet standards set by Westchester County Best Management Practices Manual. Tree protection shall be carried out in conformance with ANSI 300 standards by a company accredited in such practices. The tree protection plan shall be posted for the duration of construction and landscaping in a manner readily visible from the street .

## Appendix 1A - FOSP Summary of Recommendations

The board of directors of the Friends of the Scarsdale Parks, Inc. submits the following recommendations and markup of the Tree Code as a supplement to the report submitted by the Conservation Advisory Council. These ideas build on FOSP’s presentation to the Village Board on February 24, 2015. The recommendations of both groups begin with the premise that tree canopy provides innumerable benefits:

“The composition and arrangement of trees within a city can provide a range of benefits for the urban community. Urban trees moderate micro-climate. . . ; reduce energy use and atmospheric carbon dioxide. . . ; improve air, soil, and water quality . . . ; mitigate stormwater runoff. . . ; reduce noise, increase property values, and enhance the social and aesthetic environment of a city. . . . These social, economic, and ecological benefits are often correlated with tree and crown size. Numerous studies illustrate a direct relationship between the associated benefits of trees and their leaf-atmosphere interactions, suggesting that each benefit may be a function of tree canopy and leaf area. . . .”<sup>2</sup>

While FOSP endorses some but not all of the CAC’s current recommendations in its “Proposed Update to Tree Ordinance, dated April 2016, how to achieve these benefits within or outside the framework of the Code remains to be determined, and might require consideration of the following, among other possible ideas and initiatives:

1. The use of the “50% canopy” metric without reference to three dimensional factors that create canopy benefits, such as surface leaf area, crown cover and crown width<sup>3</sup>;
2. The use of six inches as the optimal measure of diameter at breast height (DBH) is arbitrarily high. The use of DBH varies according to a tree species’ age, predicted diameter at maturity, growth habit, soil and other site conditions, climate, etc.;
3. For the purpose of notification to neighbors about tree removals, the definition of a “substantial” tree as greater than “twelve inches DBH” is arbitrary and doesn’t reflect the other relevant factors stated in item #2 above.<sup>4</sup>

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<sup>2</sup> B. Troxel, et al., Relationships between Bole (DBH) and Crown Size for Young Urban Trees in the Northeastern USA (Urban Forestry & Urban Greening 2013), at [http://environment.yale.edu/silviculture/files/troxetal\(1\).pdf](http://environment.yale.edu/silviculture/files/troxetal(1).pdf) . See also E. Wharton, Predicting Diameter at Breast Height from Stump Diameters for Northeastern Tree Species, (U.S.D.A. 1984), at [http://www.fs.fed.us/ne/newtown\\_square/publications/research\\_notes/pdfs/scanned/ne\\_rn322p.pdf](http://www.fs.fed.us/ne/newtown_square/publications/research_notes/pdfs/scanned/ne_rn322p.pdf) .

<sup>3</sup> P. Peper, et al., Equations for Predicting Diameter, Height, Crown Width, and Leaf Area of San Joaquin Valley Street Trees (Journal of Arboriculture 2001), at [http://www.fs.fed.us/psw/programs/uesd/uep/products/cufr\\_94\\_PP01\\_39.pdf](http://www.fs.fed.us/psw/programs/uesd/uep/products/cufr_94_PP01_39.pdf) .

4. Land use boards should be requested to encourage builders/developers to site construction in a manner that will minimize and/or avoid cutting down trees.

FOSP respectfully refers the Village Board to the attached redline markup of Section 281 of the Tree Code, and prior submissions dated September 29, 2014 and December 30, 2014, for our additional recommendations on Code amendments.

## Appendix 2 – Code Section 281 Changes *In Situ*

All of section 281 is shown here with proposed changes **recommended by the CAC** shown in **bold green** and proposed additions and changes **recommended by FOSP** shown in **bold red or in blue-line**. Red text in parentheses offer further commentary, and are not intended for inclusion.

### Article I. Trees

#### § 281-1. Legislative intent.

The preservation and maintenance of trees is necessary to protect the health, safety, environment, ecosystems and general welfare of the inhabitants of the Village of Scarsdale. Trees provide necessary shade, green space and aesthetic appeal, impede soil erosion, aid water absorption and provide other environmental benefits and generally enhance the quality of life within the Village. The destruction and damage of trees and the indiscriminate and excessive cutting of trees cause barren and unsightly conditions, create surface drainage problems, increase municipal costs to control drainage, impair the value of real property and adversely affect the character of the community. This article seeks to address these conditions.

#### § 281-2. Definitions.

Terms as used in this chapter shall have the meanings:

#### **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, the New Jersey Society of Certified Tree Experts, the State of Connecticut Department of Environmental Protection or the New York State Cooperating Consultant Forester Program.**

#### **CERTIFIED ARBORIST PLAN OR REPORT**

**A plan or report prepared by a certified arborist containing specific information on the tree(s) and/or shrubs to be removed, including, but not limited to species, size, location, condition, structure, height, crown integrity, crown spread, age, pruning history and presence of pests or disease. The report shall include the arborist's name, address, business affiliation, certification information and signature.**

#### DBH

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<sup>4</sup>See, e.g., Code, Village of Irvington New York, Chapter 202, Tree Preservation, Section 202-2, Definition of Protected Tree, at <http://ecode360.com/11800036> (DBH of 8 inches or more, regardless of location; DBH of 3 inches or more in wetlands).

The diameter of a tree trunk measured at 54 inches above the ground on the uphill side.

DISTRIBUTION LINE

An electric line having a voltage of less than 69 kilovolts.

EMERGENCY

A serious situation or occurrence that happens unexpectedly and demands immediate action

ENTITY

Any corporation, limited liability company, partnership, limited partnership or other nonmunicipal enterprise recognized by the State of New York or its agents and contractors.

HERITAGE TREE

A tree designated by the Village with the consent of the owner upon a finding that the tree is unique and/or of importance to the community as set forth in § 281-6.

INJURY TO TREES

Any action, during the course of permitted or nonpermitted work, that causes significant damage to a tree that causes or is likely to cause death of the tree.

INVASIVE SPECIES

**Invasive species means a species that is:**

- (a) nonnative to the ecosystem under consideration; and**
- (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. For the purposes of this paragraph, the harm must significantly outweigh any benefits; (6 NYCRR 575.2), and is listed on the Prohibited and Regulated Invasive Species plant lists of the New York State Department of Environmental Conservation, as amended.**

**(The NYSDEC promulgates more inclusive lists than IPANE based on scientific data.)**

LANDSCAPE PLAN

A design for the exterior landscape of a property that includes the size, type and location of trees, shrubs and other natural elements and may include grading, tree removal and tree preservation measures which is reviewed and approved by a land use board.

LAND USE BOARDS

Independent bodies that make decisions in regard to land use in the Village under the enabling authority given by the State of New York, county and/or local law. These include the Board of Architectural Review (BAR), the Zoning Board of Appeals (ZBA) and the Planning Board.

NONPUBLIC PROPERTY

Any lands not owned by the Village of Scarsdale or any other governmental entity.

PROTECTED TREE

**Protected tree means a species that is included on the New York State Department of Environmental Conservation lists of endangered, threatened, rare, and exploitably vulnerable plants under the Protected Native Plants regulation (6 NYCRR 193.3), as amended, and Heritage Trees in accordance with this article.**

**(The NYSDEC promulgates inclusive lists based on scientific data.)**

### PUBLIC PROPERTY

Lands owned by the Village of Scarsdale, which includes rights-of-way (ROW), parks, open space and Village facilities.

### REPLACEMENT TREE

**Any tree planted under the provisions of this chapter or required by a decision of a land use board. Replacement trees shall not be an invasive species or smaller than four inches in diameter (DBH) at the time of planting, unless specifically approved as part of a tree replacement plan. A removed tree shall be replaced by a tree of at least four inches DBH of the same native or other native species, or if the removed tree is an invasive species as defined herein, by a native tree of at least the same or greater DBH at maturity as the removed tree.**

**(Ensures preservation of canopy of sufficient crown size and leaf cover.)**

### RIGHT-OF-WAY (ROW)

Generally, the space owned by the Village extending approximately 13 feet from each curbline, but may include specific lands under an agreement or definition of law.

### TREE

Any woody plant of a species which grows at maturity to an overall height of 10 feet or more, has a single trunk or multiple trunks which are, in combination, a sum of **four** inches DBH **or greater**.

**(DBH at maturity varies by tree species. Specifying a DBH arbitrarily doesn't take into account species variability, site conditions or the age of a particular tree. Some valuable species don't grow in diameter quickly. An example is a native understory tree, the flowering dogwood, which has a range of DBH at maturity from 3-16 inches depending on site conditions.)**

### TREE EXPERT

An ISA-certified arborist or other professional certified by a recognized program of higher education or governmental agency as a tree expert.

### TREE PRESERVATION FUND

A fund established by the Village of Scarsdale to receive payments pursuant to this chapter, as well as voluntary donations to be used in accordance with this chapter or to augment the planting of public trees.

### TREE REMOVAL PERMIT

Permit issued by the Village Engineer in conformance with an application submitted by an applicant and approved by the Village Engineer.

### VILLAGE ENGINEER

A person employed by the Village of Scarsdale, certified and licensed by the State of New York as a professional engineer or licensed architect, or his or her designee, with responsibilities that include reviewing plans for various projects on public and private land within the jurisdiction of the Village of Scarsdale.

### § 281-3. Activities permitted as of right on nonpublic property.

A property owner may remove a tree(s) on nonpublic property as of right, provided any of the following:



A.

The tree(s) to be removed are six inches DBH or less.

**FOSP: The tree(s) to be removed are under four inches DBH.**

B.

Removal of up to two trees exceeding six inches DBH per lot per twelve-month period, excluding protected trees. A removed tree that is 36 inches DBH or greater must be replaced with a replacement tree. (CAC did not recommend a change)

**FOSP: Removal of up to one tree at or under four inches DBH per lot per twelve-month period, excluding protected trees. A removed tree shall be replaced by a tree of at least four inches DBH of the same native or other native species, or if the removed tree is an invasive species as defined herein, by a native tree of at least the same or greater DBH at maturity as the removed tree.**

**(Ensures preservation of canopy of sufficient crown size and leaf cover.)**

C.

The tree is removed under an actual or ongoing emergency when such tree removal is necessary for the protection and preservation of life or property, including adjoining parcels.

D.

**The tree is dead, dying, hazardous, or diseased as determined by a certified arborist.**

E.

The tree is an invasive species as defined herein.

F.

**Except when a tree is removed under an actual or ongoing emergency, removal of a tree that is 12 inches DBH or greater must be preceded with a two week period of public comment including notice posted within plain view of the closest street and a mailing at landowner expense to all adjacent neighbors.**

§ 281-4. Tree removal permit.

A.

The following tree removal activity requires a tree removal permit:

(1)

The removal of one or more trees exceeding six inches DBH per lot per 12 months, except as provided under § 281-3C, D and/or E.

**FOSP Version: The removal of two or more trees at or exceeding four inches DBH per lot per 12 months, except as provided under § 281-3C, D and/or E.**

(2)

Trees identified to be removed or protected as a result of a land use board determination.

(3)

Removal of replacement tree(s) **as defined herein** that are planted as a result of a land use board determination or pursuant to § 281-10.

(4)

Removal of tree(s) determined to be preserved by a land use board for at least two growing seasons after the issuance of a certificate of occupancy or land use board approval.

B.

In making a determination to grant a permit under this article for the removal of any tree, the Village Engineer's consideration shall include, but is not limited to, the following:

(1)

Whether the location of the tree endangers the health, safety or welfare of the general public, the property owner or an adjoining property owner.

(2)

Whether the tree interferes with a permitted use of the property and/or is specifically identified for removal in a wetland permit, special use permit, subdivision plan, site plan or Board of Architectural Review approved landscape plan.

(3)

Whether the location of the tree interferes with a proposed permitted construction or alteration on the property and the construction or alteration cannot be reasonably adjusted to accommodate such tree.

(4)

Whether the location of the tree prevents compliance with state, county or local laws or regulations for visual obstructions, sight lines, driveways or intersections.

(5)

Whether the tree, due to advanced age, disease, blight, infestation, storm damage, accident or other condition,

**is too compromised to be saved, as determined by a certified arborist.**

(6)

Whether the tree is located within three feet of an existing sidewalk, driveway or private roadway or if the tree is located within 10 feet of any existing dry well or other subsurface improvement or within 10 feet of any existing permanent structure or improvement.

(7)

The number of trees for which a tree removal permit is being sought.

(8)

The number of trees, if any, removed from the property during the preceding five years (other than trees removed pursuant to § [281-3A](#), [C](#), [D](#) or [E](#)). **A written record shall be kept of all such trees regardless of cause of removal.**

(9)

**In the case of trees greater than 12 inches DBH, public comment received during the permit waiting period. (FOSP: if adopted, greater than 4 inches DBH)**

C.

The determination of the Village Engineer denying the grant of a permit shall be in writing and set forth the basis for such decision, which decision may be appealed to the Planning Board.

D.

Notwithstanding any other provision of this chapter, any property owner, developer or person who has applied for and received a permit involving an approved subdivision, approved site plan, wetland permit, special permit, or any permit that requires the removal of tree(s) on any nonpublic property shall, in addition to strict compliance with any terms of such approved subdivision, approved site plan, wetland permit, special permits, or any permit that requires the removal of tree(s), make an application to the Village Engineer for a tree removal permit. There shall be no site disturbance, and the status quo shall be maintained until such time as a tree removal permit is granted or denied and the appeal process is completed. The Village Engineer may grant or deny such application for a tree removal permit on such terms and conditions as he may prescribe, it being understood that there must be full compliance with any approved subdivision, approved site plan, wetland permit, special permit or other development approval

required by the land use boards. In no event shall a tree removal permit be issued for the removal of any tree specifically designated to be saved by the Planning Board, Board of Appeals or Board of Architectural Review, unless said tree is determined to be dead, dying, diseased or hazardous to life or property or as subsequently approved by a land use board.

E.

The Village Engineer **shall** require the planting of one or more replacement trees **as defined herein** as a condition to the granting of any tree removal permit. In addition, the Village Engineer shall have the authority to require replacement trees in kind to be planted or where existing trees are so large and mature that it is not practical to replace such trees in kind, to order the planting of multiple trees and/or the payment to the Tree Preservation Fund. **A removed tree shall be replaced by a tree of at least four inches DBH of the same native or other native species, or if the removed tree is an invasive species as defined herein, by a native tree of at least the same or greater DBH at maturity as the removed tree.** In the event that the existing conditions on a lot make the planting of replacement trees not feasible, the applicant **shall** be required to make a payment to the Tree Preservation Fund in an amount that would reimburse the Village for the cost of purchasing and planting any such replacement tree or trees.

F.

Applications.

(1)

All applications for permits shall be made in writing upon forms prescribed by the Village Engineer.

(2)

The Village Engineer may require the applicant to submit plans showing existing and proposed contours at two-foot intervals on a map or plan at a scale no smaller than one inch equals 40 feet; existing trees, specifying types and sizes; trees to be removed and the reasons for removing said trees. The plans must detail all replacement trees and specify the planting location, size, species and type.

(3)

The Village Engineer may require additional information in plans that include design of all tree protection measures, including but not limited to protective fencing, tree wells and any other appurtenance that is deemed to be pertinent in reviewing an application.

(4)

Where extensive tree removal is planned as part of a tree removal permit, the Village Engineer may require the applicant to pay for the retention, by the Village, of a tree expert, as defined herein, to supervise the orderly removals in a manner that assures compliance with any permit or approved plans.

(5)

An applicant may be required to furnish the Village with a performance bond or a cash deposit in an amount determined by the Village Engineer in a form to be approved by the Village Attorney sufficient to cover 100% of the planting and restoration work to be completed after the removal of any tree pursuant to plans that are required to accompany all applications. Cash shall be deposited in a trust account as established by the Village Treasurer. The performance bond or cash deposit shall remain in effect for a period of two growing seasons after the issuance of a certificate of occupancy (CO), or where a CO is not required after final inspection and approval by the Village Engineer.

(6)

The Village Engineer, within 90 days from the date an application is submitted in final form, shall issue a permit or deny the application, unless the parties agree to extend the time for the Village Engineer to render a determination.

(7)

The Village Engineer may issue a stop-work order against any approved tree removal permit if the work performed is not proceeding in accordance with the requirements of the permit or in an orderly and diligent manner.

(8)

An application fee shall be set by resolution of the Village Board in an amount that would cover Village costs for the administration and enforcement of this chapter. The Village Manager, as appropriate, shall recommend to the Village Board fees under this chapter.

**§ 281-5. Protected trees.**

Protected Trees may not be removed unless the Village Engineer **in consultation with a certified arborist** determines, because of their condition, that they are a danger to persons or property or that they are diseased and cannot be saved.

**§ 281-6. Heritage trees.**

A.

Upon the written request and consent by any property owner, the Board of Architectural Review may designate a tree as a "heritage tree."

B.

A tree may be designated as a heritage tree upon a finding that it is unique and of importance to the community. The following factors may be considered by the Board of Architectural Review when considering designating a heritage tree:

(1)

It is an outstanding specimen of a desirable species.

(2)

It is one of the largest or oldest trees in Scarsdale.

(3)

It possesses distinctive form, size, age, location, and/or historical significance.

C.

After Board of Architectural Review approval of a heritage tree designation, the Village Engineer shall notify the property owner(s) in writing. A listing of trees so designated, including the specific locations thereof, shall be kept by the building department.

D.

Once designated, a heritage tree shall be subject to the provisions of this article unless removed from the list of heritage trees by action of the Board of Architectural Review. The Board of Architectural Review may remove a tree from the list upon written request by the property owner.

**§ 281-7. Tree expert.**

The Village may employ or retain a tree expert to advise the Village in regard to the planting, growing, pruning, removal or preservation of any tree on public and nonpublic property.

**§ 281-8. Restoration and replacement.**

A.

All persons who remove trees or cause trees to be removed with or without a tree removal permit shall restore the area by backfilling all holes and by creating an acceptable grade and covering.

Any tree damaged for any reason during construction or development of a property, or removed in violation of an approved subdivision plan, site plan, special permit, wetland permit or landscape plan, shall forfeit all or a portion of any escrow deposit or bond in an amount determined by the Village Engineer. Minor tree damage shall be treated in accordance with accepted tree surgery and best practices.

B.

Tree stumps shall be removed except where trees are removed pursuant to § [281-3](#) or the Village Engineer determines that the stumps are to be left for aesthetic purposes, to prevent soil erosion, or for other reasons. After the replacement of any tree, removal of all debris in the disturbed area shall be made immediately. The property where such planting is done must be left in a neat and orderly condition in accordance with good and acceptable planting and tree surgery practice.

C.

All tree planting, tree dressing and associated restoration work must be substantially completed within one year from the date of issuance of any tree removal permit not associated with a building permit, except that the tree removal permit may be extended by the Village Engineer for a period not to exceed six months. Under all circumstances the performance bond or cash escrow held by the Village shall continue in full force and effect until there has been full compliance and approval by the Village Engineer of all restoration work. In the event that the planting and restoration work is not substantially completed within one year of the date of issuance of a permit, and no extension has been granted, the Village Engineer shall consider the work and permit to be abandoned and declare the performance bond and/or the escrow deposit in default, and the proceeds from the bond or cash deposit shall be transferred to the Tree Preservation Fund.

D.

All newly planted trees which fail to survive two growing seasons shall be replaced by the permit holder at the expense of the permit holder. Said replacement shall be within the longer of 60 days following written notice from the Village Engineer or the period of time as may be specified in such notice. Should the permit holder fail to timely replace the trees, the Village Engineer shall serve a court appearance ticket and/or declare the bond and/or escrow deposit in default and apply the proceeds to the Tree Preservation Fund.

**§ 281-9. Certificate of occupancy.**

A final certificate of occupancy shall not be issued by the Building Inspector until all tree planting, tree dressing and associated restoration is completed to the satisfaction of the Village Engineer, except that between October 31 and April 1, the permit holder may obtain a temporary certificate of occupancy. In the case where a temporary certificate of occupancy is issued, all planting and restoration work in this instance must be completed to the satisfaction of the Village Engineer on or before the first day of the following May. The escrow cash deposit and performance bond shall continue in full force and effect until the planting and restoration work has been completed and the planting has survived two full growing seasons. Should the permit holder fail to complete the restoration work on or before May 1, the Village Engineer shall declare said performance bond or escrow in default and apply the proceeds from the bond or escrow to the Tree Preservation Fund.

**§ 281-10. Enforcement; penalties for offenses.**

A.

The terms of this chapter shall be enforced by the Village Engineer and the Building Department, except where such enforcement may be vested in the laws of the State of New York.

**B.**

Any person violating any of the provisions of this article shall be guilty of a violation and shall be fined not less than \$250 or more than \$1,000 for the first two trees. Thereafter, not less than \$500 or more than \$2,500 for each additional tree. No building, demolition, or excavation permit may be issued, and if previously issued shall be revoked, until such violation is cured in accordance with § [281-8](#) herein.

**C.**

In addition thereto, any person violating any of the provisions of this article shall replace each tree removed, killed or destroyed in accordance with the provisions of § [281-4E](#).

**Article II. Distribution Lines****§ 281-11. Distribution lines, rights-of-way.****A.**

Legislative findings and intent. The Village of Scarsdale wishes to promote the reliable delivery by public utilities of electric power to residents and businesses within the Village. The Village recognizes that tree limbs may interrupt such reliable delivery if they become entangled with electric lines and therefore public utilities must, from time to time, cut and/or remove trees. The Village also wishes to recognize and preserve the benefits of trees to the community, including, without limitation, flood mitigation, water purification, reduced soil erosion, removal of carbon dioxide from the air, providing protection from the elements and reduced use of fossil fuels for heating and air conditioning and preservation of neighborhood character. Removal of trees may lead to soil erosion, stormwater runoff and related drainage problems, which, if not regulated locally, would be deleterious to the environment and adversely impact all property in the Village.

**B.**

Any tree work in the Village right-of-way by a public utility, or its agent, including trimming and/or removal of trees must comply with nationally recognized standards and, further, that when tree removal is necessary, reasonable efforts are to be made to mitigate the loss of trees and any resulting threat by such removal by replanting, or such other actions that are necessary to protect the public health, safety, environment and general welfare.

**C.**

Utilities or their agents responsible for maintaining ROWs in the Village shall follow the tree maintenance practices for utilities established by the National Arbor Day Foundation, as amended from time to time, unless otherwise authorized in writing by a tree expert under such terms and conditions as may be specified. Nothing in this article prevents a public utility from contracting with a private entity to perform tree maintenance, as long as such tree maintenance conforms to the standards established by the National Arbor Day Foundation and provisions of this Article [II](#).

**D.**

Except for tree pruning and trimming permitted by Subsection [B](#) above, no utility or its agents or contractors shall cut, top or remove a tree on a Village ROW, unless such tree poses a danger to a distribution line. A certification by a tree expert that such tree(s) are diseased or dying or, with respect to a healthy tree, such tree is so entangled with a distribution line that pruning and maintenance practices cannot reasonably be expected to prevent such tree from falling on or otherwise interfering with the distribution line is to be filed with the Village Engineer before any work takes place. Notwithstanding any provisions of this Article [II](#), an entity may trim, top or remove a tree on a ROW if it has fallen on a distribution line or, in the judgment of the utility, is in imminent danger of doing so.

E.

Except for tree pruning and trimming maintenance practices permitted by this Article II, any public utility or other entity removing a tree on a ROW or trimming to such a degree that would constitute removal, including if done on an emergency basis, shall replant a replacement tree for each such tree removed and take such action as shall be determined by the utility's consulting tree expert so that no adverse environmental effects, including, but not limited to, drainage and soil erosion, impact the Village or adjacent property owners. All replacement trees shall be native trees for this region as designated either by the County of Westchester Department of Planning, or in the New York City Parks Department "Native Species Planting Guide for New York City and Vicinity," or in Cullina, "Native Trees, Shrubs and Vines."

§ 281-12. Enforcement penalties: Utilities and ROWs.A.

The Village Engineer may issue such regulations and forms as it deems appropriate for the administration of this Article II and may issue stop-work orders for violations.

B.

If any provision of this article is violated by any utility or its agent, the Village may, in any court of competent jurisdiction, seek injunctive relief restraining any violation of this article and/or compel the restoration described under the violation. Any violation of this article shall be punishable by a fine in the amounts set forth in § 281-10.

## Article III. Infestations, Poisonous, Harmful Weeds and Plants

§ 281-13. Unlawful to allow infestations.A.

It shall be unlawful for the owner of any land in the Village to maintain or permit to remain thereon harmful flora or fauna which is likely to cause destruction of or damage to trees or shrubs or create a potential hazard or a public nuisance, **including invasive plants and vines listed on the Prohibited and Regulated Invasive Species plant lists of the New York State Department of Environmental Conservation.**

B.

It shall also be unlawful for the owner of any land in the Village to maintain or permit to remain thereon any poisonous or harmful weed or plant that is likely to spread to other properties or become a public nuisance. **[define "poisonous"?)**

§ 281-14. Duty of owners to correct.

It shall be the duty of the owner of any land in the Village containing harmful flora, fauna or poisonous or harmful weed or plant which violates § 281-13 to destroy or cause to be destroyed such harmful flora or fauna or poisonous or harmful weed or plant.

§ 281-15. Action by Village.

In case any owner of land in the Village fails to comply with the provisions of this article, the Village Engineer shall issue a notice of correction by regular mail or in person, directing such owner(s) to comply with the provisions of this article.

§ 281-16. Penalties for offenses.

Any person committing an offense against any provision of this Article III shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

## **Article IV. Planting and Protection of Trees, Shrubs and Plants in Public Places**

### **§ 281-17. Findings and purpose.**

The preservation and protection of trees, shrubs and plants is necessary to protect the health, safety and general welfare of the Village of Scarsdale. Trees, shrubs and plants provide necessary shade, green space and aesthetic appeal, impede soil erosion, and aid water absorption, provide other environmental benefits and generally enhance the quality of life within the Village.

### **§ 281-18. Planting in public places.**

No person shall plant any tree, shrub or plant that may create a traffic hazard or other visual obstruction, pursuant to Chapter [294](#) of this Code, [\[1\]](#) within limits of any public ROW, park or other public place, without first securing a written permit from the Village Engineer or license agreement from the Village and complying with the following conditions and requirements: the permit or license shall be granted only upon a determination by the Village Engineer after consulting with the Director of Public Works that such planting does not interfere with the use of such public ROW, park or other public place and that such planting will enhance the beauty and appearance of the public ROW, park or other public place and the surrounding area.

#### **A.**

Trees planted within the limits of any public ROW, park or other public place shall be of a quality approved by the Village Engineer and shall be planted at least 30 feet apart unless otherwise authorized by the Village Engineer. Each such tree shall measure not less than **four** inches measured at 4.5 feet from the ground.

#### **B.**

Should any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to any such permit, in the opinion of the Village Engineer, interfere at any time with the use of such public ROW, park or other public place by the public or detract from the beauty and appearance of the public ROW, park or other public place or the surrounding area, the Village Engineer shall mail a notice in writing to the permittee or his successor in ownership of the abutting premises to remove such tree, shrub or plant and to restore such public ROW, park or other public place to its original condition within 15 days of the mailing of the notice. If such permittee or owner shall fail to comply with such notice, the Village Engineer may cause the tree, shrub or plant to be removed, and the public ROW, park or other public place to be restored to its original condition at the expense of such permittee or owner. Any cost incurred by the Village in the performance of such work involving the removal of any such tree, plant or shrub in any public ROW, park or other public place shall be paid by such permittee or owner, upon notice from the Village of Scarsdale, in full within 30 days of the date of such notice. In the event of nonpayment by the owner of the property or building, such costs will be assessed as a lien on the property.

#### **C.**

Any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to such a permit or license agreement shall be maintained by the owner of the abutting premises, and the Village shall not be responsible for any damage caused to or by such tree, shrub or plant.

#### **D.**

**Projects requiring approval by the Board of Architectural Review shall include either new trees planted or existing trees protected within 10 feet on either side of the public ROW.**



**The total number and species of trees planted or protected shall be specified in a landscape plan subject to approval by the Board of Architectural Review. Planting or protection shall be carried out at landowner expense.**

**E.**

**Trees planted within 10 feet on either side of the public ROW shall be drawn from the Village's approved species list and further subject to approval by the Village Engineer based on site circumstances such as overhead or underground utilities, traffic visibility, and so forth.**

294, Visual Obstructions.

**§ 281-19. Removal, cutting and trimming in public places.**

No person shall remove, kill, cut, break or trim any tree or shrub in any public ROW, park or other public place in the Village or remove any device set for the protection of any such tree or shrub, without first securing a written permit from the Village Engineer and complying with such specifications as the Village Engineer may prescribe.

**§ 281-20. Interference in public places.**

No person shall, without first securing a written permit from the Village Engineer, cause any wire or insulator or any device for the holding of any electric wire to be attached to any tree in any public ROW, park or other public place or cause any wire or other conductor charged with electricity to come in contact with any such tree or place or maintain any pole or post in such a manner as to interfere with any tree or shrub in any public ROW, park or other public place.

**§ 281-21. Fastening animals and signs in public places.**

No person shall fasten or tie any animal to or attach any sign, bill, card, notice or advertisement to any tree or shrub in any public ROW, park or other public place or allow any animal under his control to injure any such tree or shrub.

**§ 281-22. Obstructing nutrients to roots in public places.**

No person shall place or maintain on the ground in any public ROW, park or other public place any stone, excess soil or other substance in such manner as may obstruct the free access of air or water to the roots of any tree therein without first securing a written permit from the Village Engineer.

**§ 281-23. Deleterious substances about roots in public places.**

No person shall cause any brine, oil, gas, gasoline, liquid dye or other substance deleterious to tree life to pass onto or into the soil about the roots of any tree in any public ROW, park or other public place.

**§ 281-24. Penalties for offenses.**

Any person, firm or corporation violating any of the provisions of this Article IV shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine in amounts set forth in § 281-10 with respect to trees and as provided in § 281-16 for all other vegetation.

## **Article V. Land Use Boards**

**§ 281-25. When inventory, plans and bond agreements required.**

**A.**

Applications for subdivision or site plan approval or for activities in a freshwater wetland controlled area before the Planning Board; for special permits for tennis courts, swimming pools and other buildings before the Board of Appeals; and for permit approval before the Board of Architectural Review shall be accompanied by:

**(1)**

An inventory **site plan by a Certified Arborist or NYS licensed landscape architect showing all vegetation and projected canopy at maturity** of all trees on the property having a trunk diameter of four inches<sup>5</sup> or more at a point 54 inches above the ground, except that in applications for site plan approval, wetland permits or for preliminary approval for subdivision, the Planning Board may defer the inventory requirement in subdivision applications for which no development is proposed.

(2)

A tree preservation plan showing trees which are to be preserved. ~~Methods for tree preservation in areas affected by construction activities shall meet standards set by Westchester County Best Management Practices Manual.~~ **Tree protection shall be carried out in conformance with ANSI 300 standards by a company accredited in such practices. The tree protection plan shall be posted for the duration of construction and landscaping in a manner readily visible from the street.**

(3)

A tree replacement plan, if required. **The tree replacement plan shall be prepared by an ISA-certified Arborist or NYS licensed landscape architect consistent with the definition of replacement trees herein and showing projected canopy at maturity for the tree replacement plan.**

(4)

An agreement by the applicant to post a performance bond, cash deposit or other surety where required under this article, in an amount to be determined by the Village Engineer and approved as to form by the Village Attorney, to assure replacement of trees shown on preservation or replacement plans which were not fully protected or properly planted as required under this article and which do not survive for two complete growing seasons after completion of construction and that it not be released until after the foliage is out at the start of the third growing season, at which time staff would be able to verify that the tree(s) had survived.

B.

No certificate of occupancy shall be issued for new construction unless the applicant meets conditions for providing a tree inventory, a preservation plan, a replacement plan and the posting of a bond or cash deposit, where required.

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<sup>5</sup> 4 inches DBH is consistent with FOSP recommendations.