

Village of Scarsdale



Memorandum

Village Manager's Office

To: Stephen M. Pappalardo, Village Manager
From: Ingrid M. Richards, Assistant Village Manager
Date: February 20, 2018 (**Revised: April 6, 2018**)
Re: **Proposed Amendments to Chapter 281: Trees, Grass, Brush and Weeds**

Purpose and Introduction

The Sustainability and Law Committees of the Board of Trustees jointly held four public meetings to review, discuss and gather input from the public on the proposed amendments to Chapter -281: Trees, Grass, Brush and Weeds developed by the tree working group (“working group”). This memo outlines the process that was instituted to develop the proposed amendments to Chapter 281, the proposed changes that were ultimately agreed to and the effect of the law.

Background

To serve as background, the Friend of Scarsdale Parks (FOSP) and Conservation Advisory Council (CAC) previously recommended a number of amendments to Chapter 281: Trees, Grass, Bush and Weeds in the Village of Scarsdale Code. In order to review certain FOSP and CAC draft amendments to Chapter 281, the Land Use Committee and Municipal Services Committee of the Board of Trustees convened on June 14, 2016 and requested that a working group comprised of representatives from the Village Staff, FOSP and CAC be formed to further review the law and jointly agree on amendments before presenting to the Board of Trustees for its consideration. The proposed amendments, ultimately agreed to by the working group including Village staff, would eliminate the existing as-of-right tree removal allowance, increase the number of replacement trees planted and provide additional funding for plantings in the Right of Way (ROW) and Village Parks.

Members of the working group included Trustee Deborah Pekarek, Board liaison to the CAC and FOSP; Dan Hochvert, prior to his election as Mayor, and Madelaine Eppenstein representing the FOSP; Lee Fischman and Joan Weissman representing the CAC and Elizabeth Marrinan, Village Planner; Samantha Garrison, Deputy Village Attorney; Cameron McLeod, Assistant to the Village Planner and myself representing the Village Staff. Additionally, David Goessl, Village Engineer and Ron Schulhof, representing the CAC joined the working group for subsequent meetings.

Meetings of the working group were held on November 17, 2016 and January 12, March 2, May 3 and June 22 of 2017 to discuss potential amendments to Chapter 281. Once the proposed

amendments were finalized by the working group the document was forwarded to the Sustainability and Law Committees of the Board of Trustees. Soon thereafter the Committees convened four public meetings: September 12 and November 28, 2017 and January 23 and February 7, 2018 where additional modifications were made in an effort to assuage the public's concerns of increased tree regulations on private property owners.

On March 13, 2018 the Board of Trustees officially opened the public hearing on the proposed amendments to Chapter 281: Trees, Grass, Brush and Weeds to receive comments from the public on the proposed amendments. The public comments offered to the Board of Trustees at the public hearing are attached to this memo. A common concern was that the two trees, less than 24 inches DBH, to be removed as of right over a 24 month period, in §281-4 *Tree removal permit*, required the receipt of a no fee permit. The argument being that if the removal requires a permit they are not actually as- of- right. In order to address this concern this provision was moved from section §281-4 *Tree removal permit* to §281-3 *Activities permitted as of right on nonpublic property*. To replace the permit requirement, homeowners need to provide written notification of the trees to be removed to the Village Engineer to facilitate Village record keeping.

Recommended modifications to Chapter 281: Trees, Grass, Bush and Weeds

Below are proposed amendments to Chapter 281 that represent a collaborative effort from the FOSP, CAC, Village Staff the Sustainability and Law Committees of the Board of Trustees and the Village Board of Trustees which will enhance trees in the Village of Scarsdale.

First, §281-1. *Legislative Findings and Intent* is expanded to clarify the benefits of trees to our ecosystem with reference to the deleterious effects of the destruction of trees on the environment and public health.

Second, §281-2. *Definitions* added or amended as follows:

- a new definition for Landscape Architect is added;
- a new definition for Diseased Tree is added;
- Invasive Species: the reference to the Invasive Plant Atlas of New England list is removed and replaced with the prohibited and regulated invasive plant lists of the NYSDEC;
- Protected Tree: the list of trees included in the definition is removed and replaced with a list of protected trees to be created and maintained by the Village Engineer's Department based on NYSDEC Endangered Tree List; and
- Replacement Tree: requires that the tree be native to the Northeast United States.

Third, §281-3. *Activities permitted as of right on nonpublic property (A)*, there are a number of trees that will never reach six inch DBH, resulting in beneficial trees potentially being removed without a tree permit. As such, language requiring tree permits for a limited number of small caliper native trees that are three inches or greater has been added. The trees included on the list are as follows: Hawthorn, Crabapple, Redbud, Mountain Ash, Amelanchier (Serviceberry) and Birch. Additionally, this section includes a provision that two trees on each property less than 24 inches DBH may be removed within a 24 month period. Prior to removal, a written notification of removal shall be delivered to the Village Engineer.

Fourth, § 281-4. *Tree removal permit*, two sections are added under (A): (1) a tree permit is required for the small caliper trees listed in §281-3 and (2) removal of one or more trees greater than six inches DBH that are dead, dying, hazardous or diseased as determined by a tree expert may be removed without a fee and shall not be subject to replacement requirements under § 281-5 (Replacement Trees) Additionally, § 281-4 (E) has been modified to add a requirement that the Village Engineer maintain a written record of all tree removals regardless of cause of removal.

Fifth, the proposed law adds a new § 281-5. *Replacement Trees*, to include new language that states if a tree with a DBH of 24 inches or greater is removed a replacement tree is required. The existing law states when a tree with a DBH of 36 inches or greater is removed a replacement tree is required. Additionally, in paragraph (B) of this section the Tree Preservation Fund is activated by requiring a fee be added to the Village-Wide Fees and Charges as the Village Engineer is required to charge a fee when a tree is removed and the planting of a replacement tree is not feasible.

Sixth, § 281-6. *Protected Trees*, the law as proposed states that protected trees may only be removed if the tree is deemed dead, dying or hazardous as determined by a tree expert. Additionally, a hardship provision is included in this section to allow for the Village Engineer to make a determination that if it is imprudent for the tree to remain due to factors that are uncontrollable, the tree may be removed. Additionally, new language is added to this section to clarify that protected trees that are removed are required to meet the provisions under §§281- 4 and 281-5.

Seventh, § 281- 14. *Unlawful to allow infestations*, now includes a provision precluding the planting of invasive plants and vines as listed on the Prohibited and Regulated Invasive Species plant list of NYSDEC.

Finally, § 281-25. *When inventory, plans and bond agreement are required*, is modified to ensure subdivision or site plan applications are accompanied by a tree inventory plan prepared by a tree expert, landscape architect or surveyor. The Planning Board's discretion to require an inventory of trees having a diameter of ten (10) inches DBH or more, has been removed. Additionally, the Planning Board may defer the inventory requirement in cases of lot mergers. Lastly, a tree replacement and removal plan must be prepared by a tree expert or landscape architect as defined by the law.

Effect of the proposed changes to Chapter 281

The proposed amendments increase the number of replacement trees required under Chapter 281. The requirement for a replacement tree has been decreased from 36 inch DBH to 24 inch DBH. The chart below illustrates the number of replacement trees required under the existing law from January 1, 2017 to October 26, 2017 and corresponding numbers if the proposed amendments are adopted by the Village Board of Trustees.

Type of Application	# Applications	# Trees Removed	# Trees Replaced Existing Law	# of Trees Replaced Proposed Amendments
Diseased, Dead or Hazardous	90	184	15	30
New Residential Construction	29	345	7	45
Planned Removal and General Landscaping	29	111	7	29
Residential Expansion/Alteration/Addition	24	101	9	19
Total	172	741	38	123

Conclusion

Please accept these proposed amendments to Chapter 281 as a collaborative effort among Village Staff, members of the FOSP, CAC and the Law and Sustainability Committees of the Village Board of Trustees. Much compromise was afforded by all parties to arrive at the proposed amendments attached to this memo which we believe will be an effective tool toward enhancing trees in the Village of Scarsdale. Toward that end and given that the public hearing on March 13, 2018 was closed, the Village Board should call for a public hearing to discuss the proposed amendments. I request that the attached resolution be placed on the Board of Trustees April 10, 2018 meeting agenda to schedule a public hearing for April 24, 2018.

Attachment

Cc: Wayne Esannason, Village Attorney
Elizabeth Marrinan, Village Planner
David Goessl, Village Engineer
Samantha Garrison, Deputy Village Attorney