

**INCORPORATED VILLAGE OF OCEAN BEACH  
BOARD OF TRUSTEES**

**PROPOSED LOCAL LAW NO. 6 OF 2023  
ENACTING CHAPTER 164.28.2 OF THE  
VILLAGE CODE CONCERNING  
VEGETATION PROTECTION AND  
VEGETATION REMOVAL**

Be it hereby enacted by the Board of Trustees of the Incorporated Village of Ocean Beach as follows:

**Section 1.** Chapter **164** of the Village of Ocean Beach Village Code, entitled “Vegetation Protection Ordinance”, is hereby enacted as follows:

**Article I. Tree or Vegetation Removal and Substantial Clearing**

**§ -1 Findings.**

- A. The Board of Trustees hereby finds that trees and other vegetation perform numerous important and essential functions, including but not limited to the stabilization and preservation of soil; prevention of erosion, absorption of air pollution and production of oxygen; establishment of natural barrier to noise and habitats for wildlife; and creation of a desirable aesthetic quality which is a key factor in the Village's existence as a rural resort community. The Board of Trustees further finds that the destruction or removal of trees and other vegetation deprives all sectors of society of these benefits, while disrupting ecological systems of which they are an integral part, and that regulation of such destruction or removal will protect and preserve property within the Village and promote the general welfare and health of its inhabitants.
- B. The destructive and indiscriminate removal of trees, shrubs and other woody vegetation causes increased Village costs for proper drainage control, impairs the benefits of occupancy of existing residential properties, impairs the stability and value of both improved and unimproved real property in areas of the destruction and adversely affects the health, safety and general welfare of the residents of the Village.
- C. For all these reasons, it is in the best interests of the Village, its residents, and the public to enact Village-wide regulations to ensure the thoughtful and controlled management of trees and other vegetation in the Village and to avoid and discourage the indiscriminate clearing of properties within the Village's boundaries.

## § -2 Definitions.

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

### **APPLICANT**

The owner, contract vendee or lessee of real property or his duly authorized agent.

### **DESTROY**

Includes, but without limitation: poisoning; ringing the tree; excessive peeling of bark; damaging, compacting or overburdening the roots; using herbicides, or fire, or cutting in such a manner as to bring about the ultimate death of such tree.

### **PERSON**

Any individual, their successors, assigns or agents, and any business entity, including partnerships, corporations or other business forms.

### **SUBSTANTIAL ALTERTION**

Any cutting or pruning of trees or vegetation, in excess of the normal and customary cutting and pruning necessary to: (a) preserve the health of the plant material; (b) maintain its ornamental quality; or (c) comply with other provisions of this Code concerning clearance on roads and public spaces.

### **SUBSTANTIAL CLEARING**

Any clearing, cutting or drastic pruning of trees, brush or vegetation on more that 20% of a property which alters the runoff pattern of stormwater or impairs, destroys or endangers the life of such brush or vegetation or its role as a natural habitat.

### **TREE**

A living woody perennial plant being either deciduous or evergreen. having a trunk circumference of four (4) inches or greater measured at a point four (4) feet above ground level.

### **VEGETATION**

Includes any trees, shrubs, bushes, or woody vegetation typically found on Fire Island, more than five (5) feet tall, including, but not limited to, Swamp rose (*Rosa palustris*), arrowwood (*Viburnum dentatum*), American elder (*Sambucus canadensis*), black gum (*Nyssa sylvatica*), black cherry (*Prunus serotina*), northern bayberry (*Myrica pensylvanica*), highbush blueberry (*Vaccinium corymbosum*), black chokeberry (*Aronia melanocarpa*), beach plum (*Prunus maritima*), american holly (*Ilex opaca*), sassafras (*Sassafras albidum*), and serviceberry (*Amelanchier canadensis*).

### **VILLAGE**

Includes all lands within the corporate boundaries of the Incorporated Village of Ocean Beach.

**§ -3 Regulated activities.**

On private property, no person shall perform the following acts, or cause the following acts to be performed, except in accordance with a valid permit issued pursuant to this chapter:

- A. Remove, cut down, destroy, substantially alter or substantially clear any tree or vegetation defined above in the Village, or
- B. Remove, cut down, destroy, substantially alter or substantially clear, any rare or endangered species of trees or vegetation as listed by any governmental agency of New York State or the United States, or any large or outstanding specimen of vegetation, or any tree as determined by the Board of Trustees upon written petition by Village of Ocean Beach Environmental Commission (VOBEC) or Village residence seeking to declare such tree or vegetation of significance to the Village.
- C. Upon request by the Board of Trustees, VOBEC will provide advice and recommendations on tree and vegetation related matters.

**§ -4 Rules and Regulations for the Issuance of permits.**

- A. The Village Board of Trustees will establish written rules and regulations and plan requirements for efficiently discharging the Village Building Department's responsibility under this chapter, which shall be in writing and filed in the Village Clerk's Office.
- B. Applications for a permit shall be on forms supplied by the Village Building Department and signed by the property owner.
- C. Applications for permits issued pursuant to this chapter shall be reviewed and decided by the Village Building Department.
- D. The Village Building Department shall issue a permit pursuant to this chapter when the requested action is necessary: (i) for public safety; (ii) to prevent the spread of disease or invasive pests; (iii) to preserve a preferred species or fruit tree; (iv) to avoid congested overgrowth; (v) to remove dead or dying, trees; (vi) to accommodate approved construction or demolition work; or (vii) the requested action will not adversely affect the natural or built environment on the subject property or the immediate area, and will not result in substantial clearing of an entire property.
- E. The decision of the Village Building Inspector shall be based upon the following criteria:
  - 1. The condition of the tree with respect to public safety, disease and danger of falling, proximity to existing or proposed structures and interference with utility services or intended use of the land.

2. The necessity of the removal or alteration of the tree in question.
  3. The effect of the removal or alteration thereof on the ecosystem and possible presence of protected habitat.
  4. The applicant's intention to replant trees and revegetate the property.
  5. As a condition to the issuance of a permit under this section, the Building Inspector may require the replacement in kind of one or more of the trees or vegetation to be cut down, removed, destroyed, substantially cleared or substantially altered when the individual character of the tree or vegetation or the ecological setting requires special consideration. The location and time for planting of the replacement tree or trees shall be specified by the Building Inspector in the permit for removal. The applicant and the owner of the real property affected shall each be responsible for planting replacement trees as specified in the permit. Failure to comply with planting required by the Building Inspector shall constitute a violation of this section.
  6. If removal, substantial alteration or substantial clearing is proposed, the Building Inspector may seek a recommendation from VOBEC prior to making a determination regarding the above application.
- F. A copy of the approved permit or disapproved permit shall be maintained by the Village Administrator and Village Building Department.
- E. No permit may be issued that would result in the cumulative removal, cutting down, destruction, substantial alteration or substantial clearing of more than three (3) trees or more than 20% of vegetation on the same property within the same twelve-month period.

**§ -5 Vegetation Removal Plan required.**

- A. If any tree or vegetation as defined above is proposed to be removed, cut, destroyed or substantially altered, the applicant shall submit a plan inventorying all existing trees of a four-inch diameter or larger measured four (4) feet above the surrounding ground level, certified by a professional landscape architect depicting the property, and a tree removal or alteration plan for the entire property, together with the required permit application. The removal or alteration plan shall be in conformity with the rules and regulations promulgated by the Village Board of Trustees. If such plan requires trees or vegetation to be removed, they must be replaced on the same plot by equivalent species with a total circumference equal to at least 50% of the circumference of the trees removed. Replacement or revegetation plant material shall be selected from Village Code Appendix L of recommended species known to thrive in the Fire Island environment.
- B. If any trees or vegetations defined above are to be removed, cut, destroyed or

substantially altered because of any approved new construction or substantial renovation to any existing structure(s), whether it be an addition, expansion, new structure, or demolition, the Village Building Department shall require a tree removal or alteration plan showing the location of the trees to be removed. The plan shall be submitted to the Village Building Inspector simultaneously with the building permit application. No cutting, removal, destruction or substantial alteration in connection with construction shall be permitted until the plan is approved by the Village Building Inspector. If such plan requires trees or vegetation to be removed, they must be replaced on the same plot by equivalent species with a total circumference equal to at least 50% of the circumference of the trees removed. Replacement or revegetation plant material shall be selected from Village Code Appendix L of recommended species known to thrive in the Fire Island environment.

**§ -6 Penalties for offenses,**

- A. Each tree or shrub removed, cut down, destroyed, substantially altered or substantially cleared in violation of this chapter shall be a separate violation.
- B. The Village Building Inspector shall stop all work and construction activity on any premises where a violation of this chapter has occurred and is prohibited from issuing any certification of occupancy or additional permit(s) for construction at the property or permitting work to resume, unless and until the provisions of this chapter have been satisfied.
- C. Any person convicted of violating the provisions of this chapter shall be required to replace, in kind, each and every tree removed, cut down or destroyed in violation of this chapter. If a tree was so large and mature that it cannot be replaced, the court, upon the recommendation of the Village Administrator, may require the planting of multiple trees. In addition, such person shall, upon conviction, pay a fine of not less than \$500 and not more than \$ 1,000 per tree.

**§ -7 Enforcement; presumptions.**

- A. The Village Building Inspector, Code Enforcement Officer or members of the Village Police are hereby vested with the authority to enforce the provisions of this chapter and issue summonses for violations.
- B. It is a rebuttable presumption, for enforcing this chapter, that the owner or occupant on whose land any tree has been removed, cut down, destroyed or substantially altered without the necessary permit is the person responsible for performing or permitting the act complained of.

**§ -8 Appeal process.**

Any person aggrieved by the denial of a permit sought pursuant to this chapter shall have the

right to appeal the decision to the Village of Ocean Beach Board of Trustees within 30 days after the Village Building Department issues a written denial to the applicant.

**§ -9 Exceptions.**

- A. No permit shall be required for the normal and necessary horticultural trimming and cutting of trees by a utility company to maintain utility lines or cables.
- B. Any emergency situation in which the removal, destruction or substantial alteration of any tree is necessary to prevent imminent danger to human life or property.
- C. The removal of a dead tree.
- D. Approved removal of invasive species.

**§ -10 Severability.**

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which judgment should have been rendered.

**§ -10 Effective Date.**

This local law shall take effect immediately upon filing with the New York Secretary of State