

Chapter 130

TREE CONSERVATION

GENERAL REFERENCES

Environmental
Commission — See Ch. 12.

Conservation Streets and sidewalks — See Ch. 118.

Subdivision of land — See Ch. 121.

Flood damage prevention — See Ch. 82.

§ 130-1. Findings; purpose.

- A. The Town Board finds that the destruction and damage of shade, ornamental and evergreen trees and the excessive and indiscriminate cutting of those trees in and on private property causes barren and unsightly conditions, creates increased surface drainage problems, destabilizes the soil, increases municipal costs to control drainage, impairs the stability and value of improved and unimproved real property and deteriorates the aesthetic and historic values of the community, as well as the health, safety, environment, ecological systems and general welfare of the inhabitants of the Town of New Paltz.
- B. The Town Board finds that procedures and penalties are necessary to preserve and, when necessary, to restore the health, welfare and rural character of the community which is reflected in the woodlands and trees of the Town of New Paltz.

§ 130-2. Definitions.

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

ENVIRONMENTAL CONSERVATION BOARD — The Environmental Conservation Board of the Town of New Paltz.

PERSON — Any individual, firm, partnership, association, corporation, company or organization who or which resides or occupies property or premises in the Town of New Paltz or who or which engages in actions regulated by this chapter, including any individual, firm, partnership, association, corporation, company or organization that has a lease, oral or in writing, either as landlord or tenant, for any such property or premises within the Town of New Paltz.

PROTECTED AREAS — Lands within the bounds of any property lying within 55 feet of any public highway upon which such lands adjoin, measured at right angles to the existing center line thereof, except that, in any industrial or commercial zoning district, the protected area shall be 75 feet in depth from the center line of the public highway.

TOWN — The Town of New Paltz, County of Ulster, State of New York.

TREE — A living, woody, perennial plant having a trunk of at least seven inches or more in diameter, measured at a height of 12 inches above the average natural ground level at its base, that is not grown, owned, held or maintained for sale as a nursery product, or for the production or sale of its fruit or nuts, or for agricultural purposes as defined in the Agriculture and Markets Law of the State of New York.

§ 130-3. Restricted activities.

No person shall purposely, intentionally, carelessly or negligently cut down, kill, remove or otherwise destroy, or commit any act that will lead to the eventual killing, destruction or removal of, any tree, as defined in this chapter, within the protected area, unless said person shall be in possession of a permit issued pursuant to this chapter.

§ 130-4. Permit application.

Any person seeking to cut down, kill, or otherwise destroy or remove a tree, or seeking to commit any act that will lead to the same, shall submit a complete application, in writing, to the office of the Town Building Inspector, who shall immediately cause the same to be delivered to the Chairperson of the Environmental Conservation Board. In addition to such other information as may be required by this chapter, the application shall set forth:

- A. The name and address of the applicant.
- B. The owner and location of the property upon which such tree or trees are located.
- C. A sketch or plot plan, accurately dimensioned, showing adjoining highways, adjoining lot lines, and the nature and locations of buildings, structures and other improvements.
- D. A statement as to the tree or trees to be cut down, killed or otherwise destroyed or removed.
- E. A brief statement of the reasons for the same.

§ 130-5. Fees.

- A. The Town Board of the Town of New Paltz shall establish, by resolution, the fee to be charged, collected and received for the granting of each permit required by this chapter.
- B. The fees required pursuant to the provisions of this chapter shall be paid in advance upon submission of an application, and the failure to submit the full payment required shall render the application incomplete.
- C. Nothing contained in the provisions of this chapter shall limit or impair the authority of the Environmental Conservation Board to adopt such

rule, regulation or resolution providing for the ability of the Environmental Conservation Board to waive the fee for a permit for good cause shown and under such circumstances as will serve to carry out the legitimate and lawful intentions of this chapter.

§ 130-6. Issuance or denial of permit; display; appeals; extension of deadlines.

- A. The granting of a permit by the Environmental Conservation Board shall be based upon the following criteria:
- (1) The physical condition of the tree.
 - (2) The proximity of the tree or trees to existing or proposed improvements.
 - (3) The effect of the removal upon ecological systems, including the erosion potential of the property.
 - (4) The effect of the removal on the property values and aesthetics of the neighborhood.
 - (5) Any hardship or danger to the public or to the person or property of the owner of the subject premises.
 - (6) The interference, if any, of the tree with a permitted use of the property.
- B. The Environmental Conservation Board shall, within 35 days of the date that a complete application in final form is accepted by the Building Inspector and referred by the Building Inspector to the Environmental Conservation Board, approve or disapprove the application for permit, including its plan for the restoration of the site.
- C. Any permit issued pursuant to this chapter may be issued with such conditions as the Environmental Conservation Board deems necessary. Such conditions shall be attached to the permit and signed by the Chairman and the applicant to ensure compliance with the policies and provisions of this chapter.
- D. Prior to the performance of any work and for the duration thereof, the permit shall be displayed so that it is visible from the road fronting the property.
- E. In the event that the Environmental Conservation Board fails to act upon the application within the aforesaid period of 35 days, such application shall be deemed approved, and the applicant shall be entitled to the issuance of the permit required hereunder in accordance with the application.
- F. Appeals.

- (1) Any applicant aggrieved by a decision of the Environmental Conservation Board with regard to the application may, within 30 days of the date on which the decision is mailed to the applicant, appeal such decision to the Town Board.
 - (2) The appeal shall be in writing and shall include a copy of all papers filed with the Building Inspector and the decision of the Environmental Conservation Board.
 - (3) The appeal shall be deemed filed when it is received by the Town Clerk.
 - (4) The Town Board shall act upon such appeal within 30 days after said notice of appeal is filed with the Town Clerk.
 - (5) In the event that the Town Board fails to act with respect to such appeal within 30 days after the appeal is filed with the Town Clerk, the application shall be deemed approved, and the applicant shall be entitled to the issuance of the permit required hereunder in accordance with the application.
- G. Nothing contained in the foregoing subsections of this section shall alter, limit or prohibit the authority of the Environmental Conservation Board and/or of the Town Board, with the consent of the applicant, to extend the time periods within which either the Environmental Conservation Board or the Town Board is required to act hereunder.

§ 130-7. Annual report of Environmental Conservation Board.

The Environmental Conservation Board shall submit, not later than the first business day in the month of October of each year, an annual report to the Town Board concerning the activities and work of the Environmental Conservation Board and, from time to time, shall submit such reports and recommendations as may be necessary to fulfill the purpose of this chapter.

§ 130-8. Removal of trees; restoration plan; replanting; deadlines.

- A. All persons who remove, or cause to be removed, trees with a permit shall promptly comply with the conditions of the permit requiring restoration. Anyone who removes, or causes to be removed, trees without a required permit shall, upon order of the Building Inspector, proceed diligently to restore the area by backfilling all holes and by creating an acceptable grade and covering all disturbed land. Said persons shall then submit a restoration plan to the Building Inspector, who shall review the plan in consultation with the Environmental Conservation Board. Such plan shall include all work necessary to restore the property within the protected area so as to avoid, minimize or mitigate damage that, in the judgment of the Building Inspector, following consultation with the Environmental Conservation Board, causes any of the adverse impacts identified in § 130-1 of this chapter and shall include a schedule, acceptable to the Building Inspector, to

complete any plan for restoration required by the Building Inspector. The restoration plan shall provide for any tree removed without a permit, or damaged during the permitted work and/or during construction or development of the property, to be replaced in kind, or, if the Building Inspector determines, in consultation with the Environmental Conservation Board, that the existing trees were so large and mature that they cannot be replaced, the Building Inspector may require the planting of multiple trees instead. Minor tree damage shall be repaired in accordance with accepted tree surgery practice. Nothing in this section shall be deemed to prevent the Building Inspector from also seeking any penalty or remedy provided for by this Code or other applicable laws.

- B. Tree stumps shall be cut flush to ground level. After the planting of trees, the 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 six months from the date of issuance of the permit, except that, for good cause shown, the permit may be extended by the Environmental Conservation Board.
- D. All trees that fail to survive for a period of two calendar years following planting shall be replaced by the permit holder or by the owner of the land, if other than the holder of the permit. Said replacement shall be within 60 days following written demand for such replacement from the Environmental Conservation Board, the Building Inspector or the Code Enforcement Officer or within such greater time as may be specified in the written demand in order to allow planting within an appropriate planting season.

§ 130-9. Exemptions.

- A. Anything in this chapter to the contrary notwithstanding, the provisions of this chapter shall not apply:
 - (1) To trees severely damaged by storms or other natural causes and that are located on lots used solely for residential purposes.
 - (2) To trees that would endanger the public or the person or property of the owner.
 - (3) To trees located upon that portion of the property lying within the protected area to a distance of 10 feet around the perimeter of any existing building or structure lawfully permitted on the property.
 - (4) To trees cut down, removed, trimmed, topped or otherwise disturbed by any person or his agents, servants or employees actually engaged in customary agricultural endeavors, which trees are located upon lands lying within the protected area, which lands

form a part of and/or which are contiguous with agricultural lands owned, operated or controlled by such person and devoted to the production, for commercial purposes, of crops, field crops, fruits, vegetables and livestock as such terms are defined in § 301 of the Agriculture and Markets Law of the State of New York.

- (5) To trees removed in compliance with any site plan and/or subdivision plan that has previously been lawfully approved by the appropriate governmental body, board and/or agency having jurisdiction to issue such approval.
 - (6) To trees removed from the bed of any street, roadway or highway proposed to be constructed, whether as a private roadway or for dedication to and acceptance by the Town as a Town highway and shown on a subdivision map lawfully approved by the appropriate governmental body, board and/or agency having jurisdiction to approve such subdivision map.
- B. Nothing herein shall create any obligation on the part of the Highway Departments of the Town, Ulster County or the State of New York; the New York State Thruway Authority; the State University of New York at New Paltz; and any franchised public utilities regulated by the New York State Public Service Commission or the Federal Energy Regulatory Commission to obtain a permit to cut, prune or remove trees in the conduct of their regular work on streets, rights-of-way or utility lines.

§ 130-10. Enforcement; notice to remedy violations.

- A. This chapter may be enforced by the Building Inspector, the Code Enforcement Officer, or any other official or representative of the Town of New Paltz duly designated by the Town Board.
- B. The Code Enforcement Officer is authorized to issue a notice and order to remedy violation for any violation of any provision of this chapter and to commence, in any court of competent jurisdiction, a prosecution for such violation and arrange for the issuance of process pursuant to the Criminal Procedure Law to secure the attendance of the accused.
- C. The Building Inspector or Code Enforcement Officer is authorized to include, as a condition in any notice and order to remedy violation, a direction that the person to whom such notice and order is directed appear and attend before the Environmental Conservation Board at a time and place to be determined by the Environmental Conservation Board, upon reasonable advance notice, for the purpose of securing from such Environmental Conservation Board a plan for its recommendations for the restoration of the site, including any conditions that the Environmental Conservation Board may recommend to be included in any order issued by the Building Inspector or Code Enforcement Officer to direct the implementation of the restoration plan in order to ensure compliance with the purposes and intent of this chapter. Such recommendations may provide for the posting of security

in favor of the Town and acceptable in form to the Town Attorney, in an amount sufficient to insure the full and faithful performance of the work to be completed.

- D. Any person who shall fail to comply with the directives in a notice and order to remedy violation issued by the Code Enforcement Officer within the time limit stated thereon, including obtaining a restoration permit required by § 130-8, shall be deemed to have committed a separate offense against this chapter and shall also thereafter be liable for any such violation or the penalty therefor.
- E. In the event that an appearance ticket is issued following a violation of the provisions of this chapter, an answer to such appearance ticket shall be made to the Town Court of the Town of New Paltz on the return date at the time specified in said appearance ticket.

§ 130-11. Penalties for offenses.

- A. For the purposes of this section, each cutting, killing, destroying or removing of each tree, or the committing of any act that would lead to the same, shall constitute a separate violation.
- B. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both, for conviction of a second offense, both of which offenses were committed within a period of five years; and punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, upon conviction of a third or subsequent offense, all of which offenses were committed within a period of five years. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- C. In addition to the penalties provided for in § 130-11B, above, the Town shall not issue a building or other permit, any temporary certificate of occupancy, certificate of occupancy or variance for any property for which a violation of this chapter has been served until said violation has been finally determined to the satisfaction of the Town.
- D. In addition to the penalties provided for in § 130-11B, above, any person violating this chapter shall be subject to a civil penalty, enforceable and collectible by the Town, not exceeding \$1,000 for a first offense; for a second violation committed within five years next following a first violation, to a civil penalty, enforceable and collectible by the Town, not exceeding \$2,000, and for each subsequent violation, to a civil penalty, enforceable and collectible by the Town, not exceeding \$3,500.

- E. In addition to the penalties above provided, the Town Board may also maintain an action or proceeding in the name of the Town, in a court of competent jurisdiction, to compel compliance with or to restrain by injunction the violation of this chapter.
- F. No penalty provided for by this chapter shall be deemed exclusive. The Building Inspector shall have discretion to seek one or more of the penalties provided herein in a court of competent jurisdiction.