

#10

INTRODUCTORY LOCAL LAW NO. __ OF 2019

**A LOCAL LAW ADDING CHAPTER 172
ENTITLED
"TREE PRESERVATION AND PROTECTION"
TO THE CODE OF THE TOWN OF NEWBURGH**

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Adding Chapter 172 Entitled 'Tree Preservation and Protection' to the Code of the Town of Newburgh".

SECTION 2 – TREE PRESERVATION AND PROTECTION

A new Chapter 172 entitled "Tree Preservation and Protection" is hereby added to the Town of Newburgh Municipal Code to read as follows:

"Chapter 172

TREE PRESERVATION AND PROTECTION

§172-1 Findings and Purpose.

- A. The Town Board of the Town of Newburgh finds that trees are unique, intrinsically significant and valuable assets in and to the Town. Due to their size, species, historic association and ecology, they contribute significantly the health and general welfare of the citizens of a community. While allowing for reasonable improvement of land within the Town, it is the policy of the Town to enhance the tree population and to maintain and protect, to the greatest extent feasible, existing trees within the Town. The planting of additional trees and the preservation of existing trees in the Town provides the following benefits to the Town and its residents:
1. Trees enhance the unique physical, historical and aesthetic character of the Town.
 2. Trees aid in controlling storm water run-off, stabilizing soil by preventing erosion, and sedimentation and replenishing ground water supplies.
 3. Trees enhance air quality by removing carbon dioxide, generating oxygen and filtering air pollutants.
 4. Trees reduce noise through buffering and screening.
 5. Trees reduce energy consumption by providing shade and a windbreak effect.

6. Trees enhance the habitat and food source for birds and other wildlife, which in turn control insect populations and maintain the balance of natural ecosystems.
 7. Trees enhance property values and create a desirable residential and commercial environment.
- B. The Town Board recognizes that a certain amount of trees will be lost as an inevitable consequence of development within the Town. The Town Board has determined it to be in the best interest of the Town to protect and enhance the existing tree population to the greatest extent feasible and to replace trees which are lost due to development activities.
- C. The Town Board has determined that the adoption and implementation of a tree preservation local law will recognize and allow a property owner to develop his or her property in a reasonable manner while protecting the various benefits to the community which are provided through the protection and maintenance of trees within the Town, including, but not limited to the soil erosion and sedimentation, improved air quality, reduced noise pollution, energy conservation through natural insulation and shading, enhanced property values, and the preservation and maintenance of the unique physical, historical and aesthetic character of the Town.

§172-2 Definitions.

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

AUTHORIZED OFFICIAL - The Town Code Compliance Supervisor or other person designated by the Town Board to administer and maintain the provisions of this chapter

BUILDABLE AREA – That portion of a lot remaining after minimum required yards under Chapter 185, Zoning, have been provided, after limitations of any pertinent environmental regulations have been applied, but excluding those portions which may be required to meet maximum lot building coverage and lot surface coverage requirements..

BUILDING AREA - The area of a property on which there is proposed the construction of physical improvements including, but not limited to, the building, deck, accessory buildings or structures, porch, patio, driveway, septic field road right of way and any utility corridor.

CANOPY COVER TREE – A tree which at maturity will achieve a canopy spread of forty or more feet in diameter.

CLEAR CUTTING OR WHOLESALE TREE CUTTING - The removal of substantially all trees from a property or area of property, whether by cutting or other means.

CRITICAL ROOT ZONE - The circular area measured outward from the tree trunk one (1) foot of radius for each one (1) inch of diameter of the tree measured four and one-half (4 ½) feet above the existing grade at the base of the tree.

DBH – Diameter of a tree at 54 inches above the existing ground level at the base of the tree.

DEVELOPMENT - Any proposed material change in the use or character of land, including but not limited to grading or re-grading, excavation, land clearing, placement or construction of any structure, the replacement or removal of any structure or any site improvements such as building additions, decks, fences and the like.

DEVELOPMENT ACTIVITY – The implementation of development.

DISTURB - Any act which causes or may reasonable be expected to cause a tree to die, including damage to the trees root system or trunk, compaction of ground within the root system of a tree, a change in the natural grade above the root system of a tree, and trenching within the critical root zone.

DISTURBANCE ZONE - Any area which would be physically altered from its natural state, including but not limited to all areas of grading, utility installation, building pads, driveways, parking areas or other structures.

DRIP LINE - An imaginary vertical line from the outermost branch tips of a tree down to the ground.

NATURAL PRESERVE - Publicly owned lands designated as park or open space or private properties approved by the Town which are set aside to preserve their natural characteristics and qualities and protected by easement or other permanent agreement acceptable to the Town.

PROTECTED TREE - Any tree having a size (circumference, height and spread) equal to or greater than fifty percent (50%) of the size identified on the New York Big Tree Champions List for such tree species.

SIGNIFICANT TREE - Any healthy tree measuring fourteen (14) inches or larger in diameter at DBH and that develops a canopy that is not invasive for deciduous trees and measuring ten (10) inches or larger in diameter at DBH for all other trees.

SPECIMEN TREE – Any tree with a trunk diameter that equals or exceeds twenty (20) inches at DBH with a sound trunk showing no extensive decay or hollow, with less than 20 percent radial trunk dieback and no major insect or pathological problem of such species as achieves a canopy spread of forty or more feet in diameter upon maturity

TOPPING – The removal of a tree’s leafy crown, creating stubs of the larger vertical leader stems.

TREE INCHES - The diameter of a Significant Tree measured in inches.

TREE PROFESSIONAL - A person who is a licensed or certified Arborist, Horticulturalist, Certified Nursery Landscape Professional, Landscape Architect, Forester, or restoration ecologist and who has a minimum of two (2) years practice in the fields of arboriculture, horticulture or restoration ecology.

VERNAL POOLS - Depressional areas that are seasonally covered by shallow freshwater for variable periods of at least two months from winter to spring but may be completely dry during the summer and fall. inhabited by many species of wildlife, and of which vegetation, fallen leaves, woody debris and protective tree canopies are important components.

§172-3 Scope.

- A. The Town strongly encourages the preservation of trees on all properties within the Town.
- B. The provisions of this chapter shall apply to the following properties:
 - 1. Any property being developed which involves an application for site plan approval where trees would be removed in the buildable areas and driveways.
 - 2. Any property being developed which involves an application for subdivision approval where trees would be removed in the buildable areas, driveways and streets;
 - 3. Any parcel or parcels of land of five (5) acres or more in size on which the owner or his agent removes or otherwise disturbs Significant Trees or Protected Trees in violation of the provisions of Section 172-4.A or in excess of the removal and disturbance thresholds set forth in Section 172-4.B and C hereof within 24 months prior to the date on which such owner or other applicant files an application to the Planning Board to develop the parcel or parcels, whether or not the applicant has obtained a clearing and grading permit to perform such work.
 - a. The owner shall be required to comply with the reforestation and restitution provisions of this Chapter as if an application identified in Subsections 172- 3B.1 or 172-3B.2 above had been submitted to the Town at the time such action was taken.

- b. Clearing and grading permits and approvals issued following the date of this Chapter's enactment shall contain a notice that submission of a subsequent application for site plan or subdivision approval for the parcels within the specified 24 month period will subject the property to this Chapter's requirements.
 - c. Parcels on which disturbance has been undertaken pursuant to a permit or final approval duly issued or granted prior to the effective date of this Chapter shall be exempt from the prior 24 month requirement with respect to the permitted activities.
- C. The provisions of this chapter shall not apply to trees located on a parcel on which a tree farm, nursery, or greenhouse is operated provided such exemption shall only apply to trees which are considered inventory for said operation and held out for sale in the regular course of business for said operation
- D. The provisions of this Chapter shall not apply to activities necessary to farm operations within Agricultural Districts to the extent the provisions unreasonably restrict farm operations.

§172-4 Tree removal/disturbance thresholds and restrictions.

- A. No person shall, prior to the issuance of a clearing and grading permit, a stormwater management plan approval or site plan, special permit or subdivision approval, conduct clear cutting or wholesale tree cutting activities on any property within the Town, unless such activity is exempt under the provisions of the applicable Chapter. A violation of this provision shall constitute sufficient grounds for the Town to refuse to grant a clearing and grading permit, stormwater approval or other development permit or approval. This provision shall not be construed to permit clear cutting or wholesale tree cutting following issuance of the applicable permit or approval except in compliance with all applicable provisions of law and permit conditions.
- B. No person causing or performing development activities in residential zoning districts (RR, AR, R-1, R-2 and R-3 under Chapter 185, Zoning) shall remove or disturb more than fifty percent (50%) of the total inches in diameter of Significant Trees, nor more than fifty percent (50%) of the total inches in diameter of Specimen Trees. Any removal or disturbance beyond these thresholds shall require reforestation or restitution as hereinafter provided.
- C. No person causing or performing development activities non-residential zoning districts (B, IB and I under Chapter 185, Zoning) shall remove or disturb more than seventy-five percent (75%) of the total inches in diameter of Significant Trees. Any removal or

disturbance beyond this threshold shall require reforestation or restitution as hereinafter provided.

- E. No person shall remove or disturb any Specimen Tree unless such tree is located within the Buildable Area on lots less than 5 acres in size or unless such tree is located within the Building Area and minimum required parking area(s) on lots 5 or more acres in size, or in rights of way in which driveways or streets are being constructed. Every effort shall be made to avoid damage to or removal of such tree or trees. The owner and applicant shall have provided the Town with evidence to establish that it is not feasible to relocate the Building Area, parking area, driveways, stormwater control facilities and other improvements based upon the physical characteristics or condition of the lot or that such relocation creates undue hardship and financial expense.
- F. A topping shall be considered a removal if performed on a Specimen Tree without prior approval of the Authorized Official or his designee. This form of pruning is not an industry accepted practice and therefore should not be used except in extraordinary circumstances.
- G. Every effort shall be made to avoid removal of trees from Vernal Pools and a surrounding buffer area at least 20 feet in width.

§172-5 Application - Tree Survey/Preservation Plan.

- A. Applications to the Planning Board for approval of a tree preservation plan shall be submitted prior to or simultaneously with applications for stormwater permits, clearing and grading permits for properties subject to this Code, subdivision approval from the Planning Board, special permit and site plan approval from the Planning Board. The application must include a tree survey and tree preservation plan. The tree survey and tree preservation plan shall be prepared and signed by a registered surveyor or Tree Professional not more than two (2) years prior to submission of the complete application and shall provide the following information:
 - 1. Location, diameter and species of all Significant Trees on the site, and an identification of all Specimen Trees and Protected Trees.
 - 2. Identification of which Significant Trees and Specimen Trees are (i) to be protected, preserved or undisturbed, (ii) to be removed or disturbed, and (iii) exempt from the calculation.
 - 3. Identification of all trees which are dead, diseased or have been damaged.
 - 4. Areas proposed to be designated as Natural Preserves where all natural vegetation, including significant trees, will be protected and preserved.

5. Proposed no disturbance zones, as identified by cross-hatching or gray-colored shading on the plan.
6. Location and dimensions of Building Areas and construction zone for each lot and proposed street layout and grading contours of the site.
7. Location of all probable Vernal Pools, their maximum size and whether spring time ground verification was performed.
8. Proposed locations and details of tree protection fencing to be installed for all trees to be preserved. No excavation or other activity shall occur within the Critical Root Zone or within the Drip Line, whichever is greater, of any tree that is to be preserved.
9. Calculation of removed or disturbed Significant Tree and Specimen Tree inches on the site divided by the total Significant Tree and Specimen Tree inches on the site (excluding dead and diseased beyond remediation trees, and invasive species, at the discretion of the Planning Board).

B. The application fee, in accordance with Chapter 104, Fees, of the Code of the Town of Newburgh is to be paid at the time the tree preservation plan application is submitted. Reimbursement charges for the costs of professional services in accordance with §172-8 will also be collected at that time. In the event that land development activity under an approved tree preservation plan is divided among separate owners or developers due to subdivision, lease or other arrangements, then a separate permit for each lot, lease or arrangement shall be required and an additional fee for administration and compliance inspection shall be paid at the time each permit application is submitted in such reasonable amount as the Town Board may by resolution establish and amend from time to time.

C. Within the same time frame as is applicable to the approval of accompanying subdivision plats, site plans or permits, as the case may be, the Planning Board shall approve, with or without specified conditions or modifications, or reject the tree preservation plan and notify the applicant accordingly. If the Planning Board has not rendered a decision within the time frames specified above following completed plan submittal, the Planning Board shall inform the applicant of the status of the review process and the anticipated completion date. If the plan is rejected or modified, the Planning Board shall set forth the reasons in its adopted decision.

§172-6 Reforestation/Restitution Requirement.

- A. If the amount of Significant Tree or Protected Tree inches to be removed or disturbed exceeds the specified thresholds in §172-4, the owner or applicant shall provide a

reforestation plan, or a calculation of restitution, or a combination thereof. The reforestation plan shall comply with the restitution schedule set forth in Table 1. Tree selection for the reforestation plan shall be of varieties which create a diversified canopy of both deciduous and coniferous species. Trees under power and other overhead utility lines shall be of varieties which at mature height will not encroach on a 10 foot clearance space for the lines.

B. If a proposed development exceeds the allowable removal/disturbance threshold specified in Subsections 172-4B or 172-4C, as applicable, the owner or developer shall, at the owner's or developer's election, either:

1. reforest appropriate areas within the site (or, upon approval of the Authorized Official, outside the site if appropriate locations within the site are not available) in accordance with the approved reforestation plan; or

2. pay restitution in accordance with the provisions hereof; or

3. provide a combination thereof.

4. For each one (1.0) tree inch diameter that is removed or disturbed beyond the threshold, owner or applicant shall replant one and one-quarter (1.25) inches of new trees or provide the Town with \$5.00 per inch of new tree diameter that would otherwise be required to be planted at the location for tree restitution at other locations. Notwithstanding the foregoing, for each one (1) tree inch diameter of a tree that is described in Subsection 172-4D, applicant shall replant two (2) inches of new trees of the same type and species or provide the Town with \$8.00 per two inches of new tree diameter that would otherwise be required to be planted for tree restitution at other locations. Payment for restitution shall be made to the Town in cash prior to the signing of plans or the issuance of the permit, as the case may be.

C. Any elective payment for tree restitution shall be placed in a designated Tree Restoration Fund of the Town established by the Town Board and shall be used for reforestation projects in the Town.

§172-7. Reforestation Plan.

A. A reforestation plan shall be prepared and signed by a Certified Arborist or Certified Nursery Landscape Professional and shall comply with the following criteria:

1. The plan shall indicate the location and diameter or height of all trees to be planted.

2. No more than ten percent (10%) of the trees to be planted may be from any one plant family, unless recommended by the Tree Professional or Forester. Trees shall be selected so as to create a diversified canopy of both deciduous and coniferous species.
 3. Planting shall be of similar vegetation as found on the site, with a preference for plantings designated as native to the site.
 4. The minimum planting size for deciduous trees shall be two and one half (2 ½) inches in diameter, and the minimum planting size for coniferous trees shall be eight (8) feet in height, except that up to fifteen (15) percent of the required tree inches may be of ornamental species of a lesser size, provided the required number of replacement inches is maintained.
- B. Installation of trees shall follow generally accepted professional standards.
- C. Planting schedules shall be approved by the Authorized Official.

§172-8 Review of Tree Preservation Plans and Reforestation Plans.

- A. The tree preservation plan and any related reforestation plan or calculation of restitution shall be reviewed and evaluated by the Authorized Official. The Authorized Official may make recommendations for adjustment of locations of structures, roadways, utilities, and for replanting and other elements that may be necessary to enhance tree preservation and reforestation efforts.
- B. A tree preservation plan and reforestation plan, including the designation of any Natural Preserves, shall be considered for approval or denial by the Planning Board as part of the review of applications subject to its jurisdiction.
- C. A tree preservation plan and reforestation plan may be amended after it has been approved. The Authorized Official shall have authority to approve amendments, except that a change resulting in removal of more than five percent (5%) of the Significant Tree inches that were shown as preserved on a Planning Board approved tree preservation plan shall require further review by the Planning Board if the plan was submitted in connection with an application to that Board. As part of any amendment to a tree preservation plan, the required reforestation and/or restitution shall be increased or reduced as appropriate. Requests for amendments shall be submitted prior to removal of any trees shown as preserved on an approved plan.
- D. The findings and provisions contained in § 104-2G of the Code are hereby extended to include the review of plans required under this Chapter and associated inspections.

Accordingly, the reasonable and necessary expenses of services performed by competent professionals engaged by the Town in connection with the review of tree preservation plans and reforestation plans and related inspections and the review of proposed instruments protecting natural preserves shall be reimbursed by applicants in accordance with the procedures in § 104-2G . The initial deposits required to fund escrow accounts shall be established by the Town Board by resolution, and the Town Board may increase or decrease said amounts by resolution from time to time. All charges must be paid by the applicant prior to final approval of the plan.

§172-9 Performance Guarantee.

- A. Tree Guarantee. Replacement trees must be planted within twenty-four (24) months of the issuance of a permit or approval, as the case may be, unless such time is extended. The owner or applicant shall guarantee all trees planted pursuant to the Reforestation Plan for a period of one (1) year from the date of planting. If a tree planted pursuant to Reforestation Plan dies within one (1) year from the date of planting, the owner shall remove the tree and plant a replacement tree, which shall likewise be guaranteed for a period of one (1) year from the date of its planting.
- B. Following approval of the Tree Preservation Plan, but prior to signature of approved plans or issuance of a permit, as the case may be, the owner or applicant shall provide a performance security in the form of a bond or letter of credit acceptable to the Town as to form or cash to guarantee performance in accordance with the tree preservation plan and the reforestation plan, if applicable. The guarantee amount may be included as part of required security for public improvements, provided the period of such security to extends through the replacement period(s).
- C. The amount of the performance security shall be calculated as follows: Twenty-five (25) percent of the total Significant Tree and Protected Tree inches shown as preserved that are located within fifteen (15) feet of a disturbance zone multiplied by one hundred twenty five dollars (\$125.00) per inch of diameter, plus one hundred percent of the total tree inches of diameter required by the reforestation plan, if applicable, multiplied by one hundred twenty five dollars (\$125.00) per inch of diameter. The minimum performance security shall be one thousand dollars (\$1,000.00). The amount of the performance security shall be maintained at the calculated level until such time as (i) all trees on the site (preserved trees and new reforestation trees) have survived a winter season, which is defined as the period 31 October through 30 April for the purpose of this Section, and (ii) the Town has inspected the site and authorized a reduction or release.

§172-10. Tree Protection during development.

- A. Tree protection fencing shall be installed prior to commencement of development activities and shall remain in place until after the certificate of occupancy is issued for the building on the site. Tree protection fencing shall be installed and maintained in accordance with the "Tree Protection Detail" attached hereto as Appendix A-1. In addition to the tree protection fencing, a protective sedimentation fence shall be installed at the drip line of all Significant Trees or Protected Trees which are located down grade of any clearing, excavation and/or construction activity. The protective sedimentation fencing shall be installed and maintained in accordance with the "Protective Sedimentation Fence Detail" attached hereto as Appendix A-2 and Appendix A-3. No attachments, fences or wires other than those approved for bracing, guying or wrapping shall be attached to trees within the area for tree preservation. Approved bracing, guying and wrapping methods are depicted on the "Deciduous Tree Bracing, Burying & Wrapping Detail" attached hereto as Appendix A-4 and the "Evergreen Tree Bracing, Burying Wrapping Detail" attached hereto as Appendix A-5.
- B. No development activity shall occur within the area encompassed by the drip line or critical root zone, whichever is greater, of any tree that is to be preserved. No excess soil, additional fill, liquids, or construction debris shall be placed within the area encompassed by the drip line or critical root zone, whichever is greater, of any tree that is to be preserved.

§172-11. Inspections and final approval.

- A. Prior to removal of any trees and prior to issuance of any permit or prior to commencement of any development activities if no permit is required, all sites shall be staked and fenced for tree preservation pursuant to the approved tree preservation plan. A copy of the approved tree preservation plan and reforestation plan, if any, shall be submitted to the Authorized Official prior to the issuance of a permit or commencement of work. Upon staking of the site and installation of the tree protection fencing, but prior to issuance of any permits or commencement of any development activities, the owner or applicant shall contact the Authorized Official to schedule an inspection of the staking and fence installation on the site by the Authorized Official or designee or by a Town consultant. No permits shall be issued nor shall any operations commence, without first receiving authorization by the Authorized Official. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.
- B. Upon completion of the preliminary site grading operations, the owner or applicant shall contact Authorized Official on the approved tree preservation plan for an

inspection by the Authorized Official, a designee or Town consultant. In the event one or more Significant Trees or Protected Trees which were shown as protected on the tree preservation plan have not been protected, no additional permits shall be issued until either a reforestation plan or amended reforestation plan has been submitted and approved or restitution paid to the Town in accordance with the requirements of Section 172-6. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.

- C. Prior to issuance of a certificate of occupancy, the owner or applicant (or builder if different from the owner or developer) shall contact the Authorized Official to schedule a final tree preservation inspection to verify the preservation of trees and the planting of any reforestation trees, as shown on the approved tree preservation plan by the Authorized Official, a designee or Town consultant. This required inspection shall be made at least five (5) working days before the certificate of occupancy is requested. Prior to issuance of a certificate of occupancy, in the event one or more Significant Trees or Protected Trees which were shown as protected on the tree preservation plan have not been protected, restitution shall be paid to the Town in accordance with the requirements of Section 172-6. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.

- D. In addition to the above scheduled inspections, the Authorized Official or his designated representative or Town consultant shall periodically visit development sites prior to completion to monitor compliance with the tree preservation plan and reforestation plan approved for a project.

- E. Prior to issuance of a certificate of occupancy for a completed structure by the Code Compliance Department, the owner or applicant shall submit a statement certified by a Tree Professional, that the Property is in compliance with the approved Tree Preservation Plan and, if applicable, the Reforestation Plan. Notwithstanding the foregoing, in the event a delayed planting schedule has been approved as part of the Reforestation Plan due to weather conditions which would impair the health of the trees, the certificate of occupancy may be issued provided a performance security in the form of a bond or letter of credit acceptable to the Town as to form, or cash in an amount equal to one and one-half times the projected cost of the planting, including materials, labor and equipment, has been delivered to the Town. Any tree damaged during or as a result of construction shall be repaired to the satisfaction of the Authorized Official or his designee or Town consultant and in accordance with accepted ANSI A300 or International Society of Arboriculture practices. Observed tree damage must be repaired prior to issuance of a certificate of occupancy

- F. Within three years of the issuance of the Certificate of Occupancy, the Authorized Official or his designee or Town consultant shall perform a site inspection to verify the health of trees which were retained to meet the requirements of this Chapter and which may have suffered damage due to insufficient protective measures during development.
- G. Each required tree that is determined by the Authorized Official or his designee or Town consultant to be diseased or injured to the extent it is irreparably damaged shall be approved for removal. The burden of proof of the extent of the disease or injury shall rest with the owner or applicant, who must provide documentation from a Tree Professional.
- H. The owner of a property or properties subject to this Chapter shall be responsible for the maintenance of all required trees. No department or agent of the Town is in any way responsible for the maintenance of required trees on private property.
- I. Charges for inspections performed by a Town consultant may be charged against the escrow established in accordance with Chapter 104, Fees, of the Code of the Town of Newburgh.

§172-12. Enforcement of Tree Preservation and Reforestation Plan.

- A. A stop work order may be issued in the following circumstances:
 - 1. Tree removal has been undertaken in violation of this Chapter; or
 - 2. The required protective fencing has been damaged, destroyed, removed or otherwise rendered ineffective for the purpose for which it was required; or
 - 3. The person performing tree removal has failed to post the appropriate performance guarantee required by Section 172-9; or
 - 4. The necessary precautions as specified in the tree preservation plan were not undertaken before development activity or tree removal commenced, and/or disturbance to Significant Trees or Protected Trees has occurred or is likely to occur during development activity.
- B. The Stop Work Order shall be in effect until such time as the owner or permittee complies with the appropriate regulations or, in the case of existing or likely disturbance to significant trees, takes corrective action acceptable to the Town to mitigate any damage to such significant trees. The fee for inspections required for issuance of an order to remove a Stop Work Order shall be in the amount of

Seventy Five Dollars (\$75.00) per inspection. Notwithstanding the payment of the aforesaid fee, the removal of one or more Significant Trees, when the requirements of this Chapter have not been met is a violation of the provisions of this Chapter.

§ 172-13 Appeals.

A. The Zoning Board of Appeals, as established by Chapter 185 of the Town of Newburgh Code, shall hear and decide appeals. The procedures set forth in Section 185-55 shall be followed.

B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made in the enforcement or administration of this chapter or when it is alleged that failure to grant a variance will result in exceptional hardship to the applicant or results inconsistent with the purposes of this chapter. Appeals shall be filed with the Zoning Board of Appeals within 30 days of the date of the requirement, decision or determination.

C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and whether unnecessary hardships or results inconsistent with the general purpose of this chapter or certain provisions thereof will result from the enforcement of those standards.

E. Upon consideration of the factors of Subsection D above and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of appeals as it deems necessary to further the purpose of this chapter.

F. The authorized official shall maintain the records of all appeal actions, including technical information.

G. Variances shall only be issued upon a determination that the variance is the minimum necessary to afford relief.

H. Variances shall only be issued upon receiving written justification of:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) A determination that the granting of a variance will not result in unnecessary destruction of vegetation, additional threats to property, the environment or public safety, or extraordinary public expense or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

§172-14 Penalties for offenses.

Any person who shall violate any provision of this chapter shall be guilty of a violation as defined in Article 10 of the New York State Penal Law, and shall, upon conviction, be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment, for the first offense. Any subsequent offense within a period of three (3) years shall be punishable by a fine of not more than \$500 or imprisonment for a period of not more than 30 days, or both. Each week's violation shall constitute a separate and distinct offense.

§172-15 Civil Proceedings.

- A. Compliance with this Chapter may be compelled and violations restrained by order or by injunction of a court of competent jurisdiction.
- B. Any person who violates any provision of this Chapter shall also be subject to a civil penalty of not less than \$250 dollars for the first violation and not more than \$500 for each subsequent violation, to be recovered by the town in a civil action. Each week's continued violation shall be for this purpose a separate and distinct violation for which civil penalties may be imposed. In the event the penalty sought is within the monetary jurisdiction of the Town Justice Court, as established in Article 18 of the Uniform Justice Court Act, such action to recover such penalty may, as determined by the attorney representing the town, be commenced as a small claim pursuant to the provisions of Article 18 of the Uniform Justice Court Act. In the event the town takes legal action to enforce this Chapter, the violator may be responsible for any and all necessary costs relative thereto, including attorneys' fees."

SECTION 3 - SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the

proscribed application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

SECTION 4 - CONFLICT WITH OTHER LAWS

Where this Law differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the Town and the public shall apply.

SECTION 5 - EFFECTIVE DATE.

This Law shall become effective upon filing with the New York State Secretary of State.

SECTION 6 - AUTHORITY.

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

Appendix A-1

Tree Protection Detail

Appendix A-2

**Protective Sedimentation Fence Detail
Part 1**

Appendix A-3

**Protective Sedimentation Fence Detail
Part 2**

Appendix A-4

Deciduous Tree Bracing, Burying & Wrapping Detail

Appendix A-5

Evergreen Tree Bracing, Burying & Wrapping Detail

Table 1

Restitution Schedule

8" - 12" — 2 trees at 2" - 2.5" cal. min.

12" - 16" — 3 trees at 2" - 2.5" cal. min.

16" - 24" — 4 trees at 2" - 2.5" cal. min.

14" - 36" — 5 trees at 2" - 2.5" cal. min.

Over 36" — 8 trees at 2" - 2.5" cal. min.

LOCAL LAW NO. ___ OF THE YEAR 2022

TOWN OF NEWBURGH

A LOCAL LAW AMENDING CHAPTER 104 ENTITLED "SCHEDULE OF FEES" OF THE TOWN OF NEWBURGH MUNICIPAL CODE:
TREE PERSERVATION PERMIT FEES

BE IT ENACTED by the Town Board of the Town of Newburgh, County of Orange as follows:

SECTION 1 - TITLE This Local Law shall be referred to as "A Local Law Amending Chapter 104 entitled 'Schedule of Fees' of the Code of the Town of Newburgh: Tree Preservation Permit Fees".

SECTION 2 - AMENDMENTS TO CHAPTER 104

A. Subsection D of Section 104-2 entitled "Miscellaneous planning, zoning and Building Department fees" of Chapter 104 entitled "Schedule of Fees" of the Town of Newburgh Municipal Code be and hereby is amended as follows:

1. A new sub-subsection 104-2D(13) is hereby added to read as follows:

(13) Tree preservation permit application: \$200"

B. Subsection E of Section 104-2 entitled "Planning, zoning and building fees" of Chapter 104 entitled "Schedule of Fees" of the Town of Newburgh Municipal Code be and hereby is amended as follows:

1. A new sub-subsection 104-2E(2)(b)[7] is hereby added to read as follows:

(b) The Town of Newburgh Planning Board shall compute the initial escrow charge in accordance with the following schedule:

"[6] Tree preservation permit: \$ ___ per ___,."

SECTION 3 - PENDING APPLICATIONS

Applications which are pending before the appropriate Board or department of the Town of Newburgh as of the effective date of this Local Law and for which fees or partial fees have already been paid shall be subject to the fees set forth in Chapter 104 prior to this amendment with respect to those fees already paid and the fees established herein shall apply only to fees

which were unpaid or applications submitted after the effective date of this Local Law.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 - EFFECTIVE DATE

This Local Law shall take effect on the later of the date it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.