

# Code of the Town of Ossining, New York (Westchester County)

Updated 11 - 10 - 2005  
(Supp No. 55)

## Chapter 183: TREE PROTECTION

[HISTORY: Adopted by the Town Board of the Town of Ossining 7-11-1995 as L.L. No. 5-1995. Amendments noted where applicable.]

### GENERAL REFERENCES

Environmental quality review — See Ch. 85.  
Excavations — See Ch. 87.  
Flood damage prevention — See Ch. 102.  
Parks — See Ch. 138.  
Subdivision of land — See Ch. 176.

### § 183-1. Title.

This chapter shall be known and may be cited as the "Tree Protection Ordinance of the Town of Ossining."

### § 183-2. Legislative findings.

- A. The Town Board of the Town of Ossining finds that trees (as defined below) in the town are potentially in jeopardy of being destroyed or damaged by possible uncontrolled and unregulated cutting, regrading, drainage alteration, construction or other such acts. The trees in the town are a valuable natural resource which can serve to benefit the entire town and surrounding region by one or more of the following:
- (1) Providing shade and cooling the air, ground and buildings.
  - (2) Diffusing glare.
  - (3) Reducing soil erosion, especially on steep slopes.
  - (4) Absorbing stormwater runoff and reducing the possibility of flooding.
  - (5) Providing habitat for wildlife and an ecological niche necessary for the protection of species.
  - (6) Buffering views of development and maintain the existing character of the town.
  - (7) Reducing air, soil and water pollution.
  - (8) Balancing the oxygen in the air by removing carbon dioxide.
  - (9) Reducing wind, resulting in energy efficiency for the heating of buildings during winter.
  - (10) Contributing to the significance of historic buildings, structures and places in the town.
  - (11) Serving as an amenity that helps to satisfy people's psychological and aesthetic needs.
  - (12) Providing the renewable resource which supplies fuel, building materials and food.
- B. Protection of trees is a matter of concern to the town. The establishment of regulatory and conservation practices for such protection serves to protect the public health, safety and general welfare by ensuring review, regulation and inspection of any activity affecting trees which might adversely affect the health, safety and general welfare.
- C. Trees form part of the community and visual character of the Town of Ossining.

### **§ 183-3. Intent.**

- A. Tree protection. Pursuant to General Municipal Law § 96-b, it is declared to be the intent of the Town of Ossining to control, protect, conserve and regulate the use of trees within the town to ensure that the benefits found to be provided by all trees as set forth in § 183-2 hereof will not be lost and to protect the broader public interest.
- B. Landowner protection. These regulations are enacted with the intent to provide a reasonable balance between the rights of the individual property owners to the free use of their property and the rights of present and future generations of town residents.
- C. Incorporation with other review procedures. It is the intent of this chapter to incorporate the consideration of tree protection into the town's existing land use development approval procedures and state environmental quality review regulations, as well as other local environmental regulations, where applicable. To the maximum extent possible, the review, hearing and decision upon any permit requested under this chapter shall be coincident with similar procedures that the approval authority (as defined in § 183-4 of this chapter) may undertake in regard to other applications related to this permit application.

### **§ 183-4. Definitions.**

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

**APPLICANT** — Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, excluding the Town of Ossining and its governmental agencies, who request the approval authority to issue a permit, or to whom a permit has been granted under the provisions of this chapter. This chapter shall only serve as a guide to the Town of Ossining and its governmental agencies.

**APPROVAL AUTHORITY** — The town agency(ies) or public official(s) empowered to administer the permit procedures of this chapter, as described herein.

**CLEAR CUTTING** — The cutting of more than 10 trees with a DBH of six inches or greater in a given lot, within any twelve-month period.

**DIAMETER AT BREAST HEIGHT (DBH)** — Standard measurement of the diameter or caliper of a tree made at four and one-half (4 1/2) feet above ground level on the uphill side.

**DRIPLINE** — An imaginary, roughly circular line extending from the maximum spread of the limbs of a tree or shrub to the ground.

**ENVIRONMENTAL ADVISORY COMMITTEE** — Environmental Advisory Committee of the Town of Ossining, New York.

**FLOWERING TREE** — Any living woody plant with an erect perennial trunk, a definitely formed crown of foliage, a diameter at breast height of at least three inches and a definite flowering season.

**LOT** — Any separately designated parcel as shown on the Town Tax Maps.

**PLANNING BOARD** — The Planning Board of the Town of Ossining, New York.

**PUBLIC TREE** — Any tree growing in any public road right-of-way, public park, public utility right-of-way or in any other public place. "Public trees" are regulated in § 183-9B herein.

**RECOGNIZED TREE EXPERT** — A forester listed on the New York State Department of Environmental Conservation's approved forester list, a landscape architect licensed in the State of New York, an arborist certified with the National Arborists Association or a similarly qualified individual.

**REGULATED BUFFER ZONE** — Any area of vegetative screening, as established by an approved site plan, special permit, conditional use permit or subdivision plat or as measured from each perimeter

property line of a residential property towards the interior of such property as follows:

<b>Zoning District</b>	<b>Width of Regulated Buffer Zone (feet)</b>
R-40 One-Family Residence	10
R-35 One-Family Residence-Office	10
R-30 One-Family Residence	10
R-20 One-Family Residence	5
R-20A One-Family Residence	5
R-15 One-Family Residence	5
R-15X One-Family Residence-Office	5
R-10 One-Family Residence	3
R-7.5 One-Family Residence	3
R-5 One-Family Residence	3

**SIGNIFICANT TREE** — A tree on the town's Significant Tree List.

**SIGNIFICANT TREE LIST** — A list maintained by the town and determined by the Town Board on the recommendation of the Environmental Advisory Committee of trees or groves of trees to be significant on the basis of quality, historical significance or other unique characteristic.

**TOWN** — The Town of Ossining, New York.

**TOWN BOARD** — The Town Board of the Town of Ossining, New York.

**TREE** — Any living woody plant with an erect perennial trunk and a definitely formed crown of foliage with a diameter at breast height of six inches or more, unless otherwise specified in § 183-5 of this chapter.

**TREE INJURY** — Any act which may cause a tree to die within a three-year period. This may include, but is not limited to, any damage caused by stripping the bark from any tree or setting fire to any tree.

**TREE REMOVAL** — Any act of cutting down or transplanting a tree.

**TREE REMOVAL PERMIT** — Authorization under this chapter granted by the approval authority to conduct a regulated activity.

**§ 183-5. Regulated activities; tree removal permit required.**

Except as provided in § 183-6, Activities permitted without tree removal permit, it shall be unlawful to conduct, directly or indirectly, any of the following activities in the Town of Ossining unless a permit is obtained pursuant to § 183-8, Permit application process:

- A. Removal of a tree with a DBH of three inches or greater within a property's regulated buffer zone.
- B. Removal of a flowering tree with a DBH of three inches or greater.
- C. Removal of a significant tree or regrading activity or utility excavation within the dripline of any significant tree.
- D. Removal of any public tree with a DBH of six inches or greater on slopes over 25% or regrading or utility excavation within the dripline of any tree with a DBH of six inches or greater.
- E. Removal of any tree with a DBH of six inches or greater or regrading activity or utility excavation within the dripline of any public tree with a DBH of six inches or greater on slopes over 25%.

- F. Removal of any tree with a DBH of six inches or greater in any common open space (such as in a condominium project), buffer area, landscaped screening area or conservation area designated on an approved site plan, special permit or conditional use permit or on an approved final subdivision plat or construction plan.
- G. Removal of any other tree with a DBH of 12 inches or greater.
- H. Clear cutting, as defined in § 183-4 herein.

**§ 183-6. Activities permitted without tree removal permit.**

The following activities are permitted without a tree removal permit:

- A. Removal of any tree not regulated in accordance with § 183-5, Regulated activities; tree removal permit required, of this chapter.
- B. Removal of any tree under an actual or ongoing emergency condition when such immediate tree removal is necessary for the protection and preservation of life or property and there is no time to wait for the granting of a tree removal permit.
- C. Forest management activities on properties under § 480-a of the Real Property Tax Law.
- D. Removal of any tree that has been found to be dead, dying, insect-infested or hazardous by a recognized tree expert.
- E. Tree pruning that does not damage the basic nature of the tree and which does not reduce the size of the tree by more than one-fourth (1/4).

**§ 183-7. Approval authorities.**

The approval authority for all applications shall be the Building Inspector, except that the Planning Board shall be the approval authority when processing a site plan or subdivision associated with a tree removal application. In such cases, the Planning Board's final approval of the site plan or subdivision application shall be deemed to include the tree removal permit. The Planning Board shall apply the same criteria and procedures as set forth herein for tree removal permits granted by the Building Inspector. If the Planning Board and another board both have approval authority over portions of an associated pending application, the Planning Board shall be the approval authority for the regulated tree removal.

**§ 183-8. Permit application process.**

- A. Any person proposing to conduct, either personally or by others, a regulated tree removal shall file an application for a tree removal permit with the approval authority as hereafter described. The application shall include the following information, except that the approval authority may waive such elements as it deems to be not pertinent or necessary for the proposed activity:
  - (1) The name and address of the property owner and applicant, if different.
  - (2) The street address and Tax Map designation of the property.
  - (3) A statement of authority from the owner of the property for any agent making an application.
  - (4) The total amount of land area involved in the action.
  - (5) The number of trees involved.
  - (6) The purpose of the permit.

- (7) A survey of that area of trees or forest to be disturbed showing the location of all trees (to an accuracy of one foot) and indicating those trees to be removed and those trees to be preserved, their species and their diameter (DBH).
  - (8) Specifications for: the protection of trees during development, redevelopment, renovation or razing; grade changes or other work within the tree's dripline; disposal of trees to be removed and replanting or planting, specifying the location, species, size and completion date for seasonal planting of trees.
  - (9) Where no site plan, special permit, conditional use permit, subdivision or other related permit is involved, Subsection A(7) and (8) above may be waived, and a simple sketch drawn by the applicant may, at the approval authority's discretion, be substituted.
  - (10) A statement that the property owner and applicant will indemnify and hold the town and its representatives harmless against any damage or injury in accordance with § 183-17, Inspection and indemnification, of this chapter.
  - (11) An application fee and inspection fee in amounts as set forth in a fee schedule established from time to time by resolution of the Town Board, unless the applicant for the tree removal permit is simultaneously applying for a building permit, in which case the building permit fee(s) shall take the place of the tree removal permit fees.
- B. If the tree removal involves clear cutting, additional information may be requested by the approval authority, including but not limited to:
- (1) Complete plans for the restoration of the site after tree removal, which shall be certified by a recognized tree expert, drawn to a scale of not less than one inch equals 50 feet, and including the following:
    - (a) A description of the anticipated vegetative cover of the tree removal area, including dominant species before and after the tree removal.
    - (b) The location of the tree removal area in relation to property lines, roads, buildings and wetlands within 100 feet thereof.
  - (2) Additional information as needed or deemed necessary by the approval authority to evaluate the proposed tree removal in terms of the goals and standards of this chapter.
- C. All information relating to a tree removal permit application, including but not limited to the application itself and additional required materials or information (if any) shall be maintained on file in the office of the Town Building and Engineering Department.
- D. When the Building Inspector is the approval authority, two copies of the application information for tree removal permits under this chapter shall be submitted to the Town Clerk at least 15 days prior to the proposed tree removal date. When a board is the approval authority, the number of copies and the submission schedule of the information shall be the same as for the related application before the board.
- E. The approval authority, upon receipt of an application meeting the requirements of this section, shall refer the application to the Environmental Advisory Committee for its review and report. For referrals from the Building Inspector, the Environmental Advisory Committee shall make a report within 10 days of the referral date; for referrals from any other approval authority, the Environmental Advisory Committee shall report to the approval authority within 30 days of the referral date or within such other period as may be specified by the approval authority. The approval authority shall give consideration to the Environmental Advisory Committee's report, assuming that the report is rendered in a timely manner.
- F. Application for tree removal permits may relate to multiple activities regulated under this chapter and may be issued for a program of related activities to take place during the sixty-day period following the issuance of the tree removal permit, or as otherwise specified by the approval authority.
- G. The Building Inspector may refer applications for tree removal permits which involve clear cutting to

the Planning Board for the board's advisory opinion. In such cases, the Planning Board may hold a public hearing on the tree removal permit, and the Planning Board shall in all cases render its recommendation to the Building Inspector within 35 days of the application being referred by the Building Inspector. Referring the application to the Planning Board shall extend the Building Inspector's time-frame for rendering a decision on the tree removal permit by 35 days. Notice of a public hearing by the Planning Board in accordance with this section shall be given in a newspaper of general circulation in the town and to adjacent property owners at least 10 days prior to such hearing date.

**§ 183-9. Determination by approval authority.**

- A. In making its determination to grant, grant with conditions or deny a tree removal permit under this chapter, the factors to be considered by the approval authority shall include, but shall not necessarily be limited to, the following:
- (1) Whether the proposed tree removal is consistent with the purpose and findings of this chapter, as set forth in § 183-2 above.
  - (2) Whether the proposed tree removal will have a deleterious effect on the health, safety or general welfare of the residents of the Town of Ossining or its neighboring communities.
  - (3) The physical condition of the tree(s) proposed for removal (species, size and health) shall be identified with regard to their relative value of preservation.
  - (4) The effect of disturbance on the existing trees by accepted forest management practices, including the effect on ecological systems, erosion and sedimentation potential and the relationship to the surrounding vegetation and habitat.
  - (5) The effect of disturbance or removal of existing vegetation on the historical context and the scenic resources of the surrounding community.
  - (6) The effect of disturbance or removal due to utility placement that might damage a tree or spoil the symmetry or otherwise mar the appearance of a tree or trees.
  - (7) Whether the proposed action will have adequate safeguards for the protection and preservation of the environment.
  - (8) The possible or practicable alternatives to the tree removal.
- B. Notwithstanding any other factors, the removal of a regulated tree may be favored if:
- (1) The tree(s) is located near existing or proposed improvements, especially if:
    - (a) The tree(s) is within three feet of an existing or proposed sidewalk or driveway;
    - (b) The tree(s) is within 10 feet of an existing or proposed cesspool, dry well, leaching pit, septic tank or field or other subsurface improvement;
    - (c) The tree(s) is within 10 feet of any other existing or proposed structure; or
    - (d) The proposed subsurface improvement, structure, sidewalk, driveway or roadway cannot be relocated.
  - (2) The tree removal(s) will have a positive effect upon matters, including but not necessarily limited to:
    - (a) Drainage patterns in the vicinity.
    - (b) Growth of existing or proposed adjacent vegetation.
    - (c) Property values and aesthetics of nearby properties and that of the property owner.
    - (d) Solar access of nearby properties and that of the property owner.

- (e) Wildlife habitat.
- (3) The property owner will replant replacement trees of a similar species or add other vegetation to offset the negative effects of the tree removal.
- C. With consideration of the above factors, the proposed tree removal may be granted with conditions or denied if:
  - (1) The tree(s) is a significant tree, as defined in this chapter;
  - (2) The tree removal(s) will have a significant negative effect upon, among other things:
    - (a) Erosion potential and drainage patterns in the vicinity;
    - (b) Growth of existing adjacent vegetation;
    - (c) Property values and aesthetics of nearby properties;
    - (d) Solar access of nearby properties and that of the property owner; or
    - (e) Wildlife habitat; or
  - (3) The tree(s) to be removed is a species listed on the New York State list of endangered trees or trees of special concern.
- D. Notification of decision.
  - (1) In the case where the Building Inspector is the approval authority, the applicant will be notified of tree removal permit decisions within 15 days of the application being received by the town.
  - (2) In the case where a board is the approval authority, the applicant shall be notified of the permit decision according to the schedule set forth for other approvals or permit applications pending before the board.

**§ 183-10. Issuance of tree removal permit with conditions.**

Any tree removal permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the approval authority deems necessary to ensure compliance with the policies and provisions of this chapter. The approval authority may, as a condition of granting a tree removal permit:

- A. Require reasonable improvements, such as relocation of proposed foundation walls, driveways, surface and subsurface improvements or drainage systems, to preserve a specific tree or forest area.
- B. Regulate days and hours of the tree removal operation.
- C. Require that each tree to be cut or removed be marked at two points, one low enough on the stump to be visible after tree removal.
- D. Require such safeguards as appropriate to minimize the environmental impact of such removal operations.
- E. Require the replanting of an equal or greater number of trees of the same or similar species as those removed, at the approval authority's discretion, based on the size and condition of the trees removed.

**§ 183-11. Removal and restoration.**

- A. Removal of any tree may involve the following actions:
  - (1) The tree trunk and limbs shall be removed. Further, after the Building Inspector has made a post-removal inspection, the stump and any roots remaining above grade may be required to be removed completely.

- (2) The disturbed area may be required to be backfilled, replanted and/or reseeded.
  - (3) The applicant shall remain responsible for the acts of employees, contractors or subcontractors.
- B. If a public tree is removed, the remover must replace that tree with at least one of the same or similar species at the same location or another location agreed upon by the approval authority.

**§ 183-12. Significant tree list.**

The Environmental Advisory Committee shall compile a proposed Significant Tree List, as defined in this chapter, upon enactment of this chapter and through nominations from tree owners, the Town Historian and other interested parties, for recommendation to the Town Board as the town's Significant Tree List.

**§ 183-13. Stop-work orders.**

- A. The approval authority may suspend or revoke a tree removal permit in the form of a stop-work order if it finds that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the approved application.
- B. The approval authority may also issue a stop-work order to any person who conducts an activity for which a tree removal permit is required but has not been obtained.
- C. The approval authority shall set forth in writing its findings and reasons for revoking or suspending a permit pursuant to this section and shall keep a copy in the permit application file.
- D. The approval authority shall require the remediation and/or restoration of any violations of the conditions of the permit.

**§ 183-14. Term.**

No tree removal permit shall be valid for more than 60 days after approval of an application for same by the approval authority, unless otherwise specified by the approval authority. All permits shall expire upon completion of the work specified therein. Permits may be renewed by the approval authority. Standards for issuance of renewals may be the same as for the issuance of original permits.

**§ 183-15. Compliance with applicable provisions.**

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the securing of any other required permit or approval.

**§ 183-16. Appeals.**

Aggrieved applicants may appeal decisions of the Building Inspector by means of the procedure specified for zoning matters in Chapter 200, Zoning, of the Ossining Town Code.

**§ 183-17. Inspection and indemnification.**

Any site for which an application has been submitted shall be subject to inspection upon notice to the property owner and applicant at any reasonable time, including weekends and holidays, by the approval authority or its designated representatives. The property owner and applicant, by making application for a permit, shall be deemed to have given consent to such inspection. The property owner and applicant shall indemnify and hold the Town of Ossining harmless against any damage or injury that may be caused by

or arise out of any entry onto the subject property in connection with the processing of the application, during tree removal or within one year after the completion of the work.

**§ 183-18. Action upon completion of work.**

- A. Within 30 days after completion of all tree removals authorized under a tree removal permit issued in accordance with this chapter, the applicant shall notify the Building Inspector of such completion.
- B. Within 30 days of such notification of completion of work, the Building Inspector shall inspect the tree removal site for compliance with all conditions of the tree removal permit.
  - (1) When all tree removal(s) authorized under a tree removal permit are deemed to be completed in an acceptable fashion, the Building Inspector shall issue a certificate of completion.
  - (2) When tree removals authorized under a tree removal permit are deemed unacceptable, the approval authority shall so notify the applicant. The notification of the noncompliance shall include a list of all conditions in violation of the terms of the tree removal permit, shall specify the required remediation and shall specify a time limit for the correction of all items so listed.

**§ 183-19. Penalties for offenses.**

Any person who violates any provision of this chapter or who performs a tree injury as defined herein shall be guilty of an offense. Any associated site plan approval, special permit, conditional use permit, subdivision approval, building permit or certificate of occupancy will be suspended or revoked until steps taken by the offender meet the satisfaction of the approval authority. This violation is also punishable by a fine, as set from time to time by the Ossining Town Board, and remedial actions, possibly including the replanting of trees. For a second and for each subsequent offense within a one-year period, the offender shall be guilty of a violation, punishable by a fine as set from time to time by the Ossining Town Board and a term of imprisonment of not more than 15 days, or both. Each violation shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

**§ 183-20. Existing or prior operations or projects.**

The provisions of this chapter shall not apply to any land use, improvement or development for which a valid, existing final approval shall have been obtained prior to the effective date of this chapter, from the authority or authorities of the Town of Ossining having jurisdiction over such land use. As used in this section, the term "final approval" shall mean:

- A. In the case of the subdivision of land, approval of a final plat as the term is defined in § 276 of the Town Law.
- B. In the case of a site plan, special permit or conditional use permit not involving the subdivision of land, approval by the appropriate board.
- C. In those cases not covered by Subsection A or B above, the issuance of a building permit for the commencement of the use, improvement or development for which such permit was issued or, for those uses, improvements and developments for which the Town of Ossining does not require such permits, the actual commencement of the use, improvement or development of the land.

**§ 183-21. Amendments.**

This chapter may be amended by the Town Board after due notice and public hearing.

**§ 183-22. Severability.**

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

**§ 183-23. When effective.**

This local law shall become effective immediately upon publishing and posting as required by law.