

Topic:	Tree Preservation & Protection; Timber Harvesting; Quality of Life
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Village of Irvington
Year (adopted, written, etc.):	2000
Community Type - applicable to:	Suburban; Rural
Title:	Village of Irvington Tree Preservation Ordinance
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Abstract

Chapter 202 of the Municipal Code for the Village of Irvington regulates the cutting, killing and destruction of trees in the Village. This law was enacted as a result of the Village's findings that the presence of trees contribute to the health, safety and general welfare of the citizens.

Resource

Village of Irvington NY Tree Preservation

Code of the Village of Irvington NY

Chapter 202: Tree Preservation

General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0187%2D202%2Ehtm&cn=764&n=[1][151][764])

[codes.generalcode.com/codebook_frameset.asp?t=tc&p=0187%2D202%2Ehtm&cn=764&n=\[1\]\[151\]\[764\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0187%2D202%2Ehtm&cn=764&n=[1][151][764])

[HISTORY: Adopted by the Board of Trustees of the Village of Irvington 7-17-2000 by L.L. No. 3-2000. Amendments noted where applicable.]

§ 202-1. Legislative intent.

- A. The Village of Irvington finds that the existence of trees within the Village makes a fundamental contribution to the health, safety and general welfare of Irvington citizens. Trees, in addition to their aesthetic benefits and temperature moderation, are essential to riparian habitat, wildlife, energy conservation and the healthy ecology of the area, and these benefits to the community and environment increase as trees mature. Maturation of trees protects surface water quality, provides shade, offers windbreaks, reduces soil erosion and flooding, offers a natural barrier to noise and, together with shrubs, enhances the natural beauty and appearance of the Village, and preserves its

historic, nonurban character.

- B. Indiscriminate damage to and destruction of trees, especially mature and/or specimen shrubs and trees, cause barren and unsightly conditions, increase surface drainage problems, increase municipal expense to control drainage, impair the stability and value of developed and undeveloped property and adversely affect the health, safety, environment, ecosystems and general welfare of the inhabitants of the Village of Irvington. The unregulated destruction of trees contributes to the degradation of the natural beauty, environmental quality and historic character of the Village.
- C. This chapter seeks to promote the benefits described above by promoting a healthy and mature tree and shrub population and the maturing of the present tree population throughout the Village for the benefit of its citizens and the environment.

§ 202-2. Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

CERTIFIED ARBORIST — An arborist or firm certified by the International Society of Arboriculture, one of its chapters or another nationally recognized arboricultural organization.

HISTORIC OR UNIQUE VALUE — A quality of protected trees or shrubs that may cause them to have a special role in the historic character of the Village, lend an incomparable or irreplaceable aesthetic benefit to the community or environment or may be listed as a rare or endangered plant species on federal, state or other accredited plant registries.

PROTECTED SHRUB — Any established shrub with a height and/or spread of six feet or more that has been found by the Tree Preservation Commission (TPC) to have historic or unique value to the Village.

PROTECTED TREE — Any deciduous or evergreen perennial plant, usually having one main stem or trunk and more or less definitely formed, whose trunk has a diameter of eight inches or more (25 inches in circumference) at a height of four feet measured from the uphill side. Protected trees shall also include any tree, regardless of size, that has been found by the Tree Preservation Commission (TPC) to have historic or unique value to the Village as defined below.

TPC PERMIT — A permit duly issued by the Village Clerk or designee pursuant to the terms of this chapter.

§ 202-3. Cutting, killing or destroying protected trees and shrubs prohibited; exceptions.

- A. No person, firm or corporation or individual associated with such firm or corporation shall purposely, carelessly or negligently cut down, kill or otherwise destroy any protected tree or shrub or take any action that will result in the cutting down, killing or otherwise destroying of any protected tree or shrub without first obtaining a TPC permit.

- B. The provisions of Subsection A above shall not apply, however, if destruction of any protected tree or shrub is necessary in response to an emergency caused by an act of God or to protect health and safety of persons or property as determined by one or more members of the TPC. If the destruction of a protected tree or shrub is necessary to protect against an immediate threat to the health and safety of persons or property, and a determination of such threat cannot be made in a timely fashion by one or more members of the TPC, then such protected tree or shrub may be destroyed or removed; provided that within five days of taking such action the Village Clerk is notified in writing that such action has taken place. Such notice shall contain, at a minimum, a completed application form as prescribed by the Village Clerk and a complete explanation of the circumstances and conditions that gave rise to the emergency removal. Any removal of a protected tree or shrub based on an unreasonable reliance on the emergency provisions contained herein, as determined by the Village Clerk, may subject the person removing or destroying such protected tree or shrub or the person causing such removal or destruction to the restoration requirement of § 202-7 and/or the penalties provided in § 202-9.

- C. Notwithstanding any other provision of this chapter, where protected tree or shrub removal is proposed in connection with any site plan or subdivision application submitted to the Planning Board for approval, protected trees or shrubs may be removed from the affected property only in conjunction with and subsequent to the approval by the Planning Board of a final subdivision plat or final site plan. The Planning Board applicant shall not be required to obtain a TPC permit. Rather, the Planning Board, in connection with any site plan or subdivision application, may approve or disapprove the removal of protected trees or shrubs on such terms and conditions as it may prescribe, including but not limited to requiring the planting of trees or shrubs to replace protected trees or shrubs removed from the affected property as a condition of final site plan or subdivision application, moving or relocating proposed structures to preserve trees or shrubs that the Planning Board deems to have particular value and designating trees to be protected and preserved and the means for their protection and preservation during construction. The Planning Board may refer such subdivision or site plans to the TPC for its recommendations with regard to the proposed removal of protected trees or shrubs or their protection and preservation. If such referral is made, the TPC shall respond to the Planning Board within 21 days.

- D. If the Building Inspector, Superintendent of Public Works, or members of any Village board in the course of their duties become aware of a plan that may result in a violation of this chapter, notice of such plan shall promptly be made to the TPC.

§ 202-4. Tree Preservation Commission.

- A. The Village Board of Trustees hereby creates a Tree Preservation Commission (TPC), which shall consist of five members to be appointed by the Board for two-year terms, and no more than three such terms shall expire in any single year. TPC members shall be Village residents who have general knowledge of trees and shrubs and their planting and maintenance. TPC members shall receive no compensation for their services. **[Amended 4-15-2002 by L.L. No. 4-2002]**
- B. The TPC shall meet quarterly or as often as necessary to conduct pertinent business and shall act promptly on applications.
- C. All determinations and decisions made by the TPC shall be by a majority vote. In the event that fewer than five members of the TPC are available within a reasonable time to act upon any application, three members of the TPC shall constitute a quorum, and if no majority vote is obtained, the Village Clerk or designee shall vote on said application. **[Amended 4-15-2002 by L.L. No. 4-2002]**
- D. The determinations of the TPC shall be final, except that they shall be subject to review by the Village Board, as provided herein.
- E. The TPC is authorized and empowered to obtain the advice of persons qualified by reason of professional training in the growing and maintaining of trees and shrubs upon prior approval of anticipated costs by the Village Clerk.

§ 202-5. Granting of permits.

- A. Permits for the removal of protected trees or shrubs may be granted under the following circumstances:
- (1) That the protected trees or shrubs are dead or diseased to the extent that they cannot, or should not, consistent with good and accepted arboricultural practices, be saved, or that the removal of the protected trees or shrubs is otherwise necessary due to their health or physical condition, according to good and accepted arboricultural practices. To this effect, a written statement of a certified arborist, obtained and paid for by the applicant, may be required by the TPC of any applicant who proposes to destroy any protected tree or shrub.

- (2) That the presence of protected trees or shrubs causes undue hardship or danger for the person or property of the owner, or danger to the public, to public property or to the person or property of an adjoining property owner.
 - (3) That protected trees or shrubs are within 10 feet of the perimeter of existing or planned buildings or structures for which a valid building permit has been issued.
 - (4) That protected trees or shrubs substantially interfere with a permitted and intended use of the property.
 - (5) That the property owner has an approved permit to fill or relandscape and that such filling or relandscaping, in the opinion of the TPC, shall lead to the demise of protected trees or shrubs.
 - (6) The protected trees are located on a fifteen-percent slope as defined in § 224-80 of Chapter 224, Zoning.
- B. The Village may, as a condition to granting the application for a permit, require the applicant to replace any protected tree or shrub which is the subject of the application with a replacement tree or shrub under conditions specified in the issued permit. Such replacement shall be performed in accordance with the provisions of § 202-7B, C and D.

§ 202-6. Procedural requirements for permit.

- A. All applications for TPC permits hereunder must be made in writing upon forms prescribed by the Village Clerk by the owner or duly authorized representative of the owner of the property on which such protected tree or shrub is located. The fee for each application shall be as set from time to time by the Board of Trustees for each protected tree or shrub for which removal is requested, payable upon submission of the application. **Editor's Note: See Ch. 114, Fees and Charges. [Amended 8-18-2003 by L.L. No. 20-2003]**
- B. All applications for TPC permits shall be referred by the Village Clerk to the TPC for review. Permits will be granted in accordance with §§ 202-4 and 202-5 of this chapter.
- C. The application shall include the types and sizes of trees or shrubs to be removed and destroyed, the reasons for removing or destroying said trees or shrubs, and a plan clearly indicating the location of the property, and the trees or shrubs to be destroyed.
- D. Where five or more tree cuttings are planned for relandscaping, a landscape design plan indicating the species and location of replacement plantings must also be attached to

the application. If 10 or more protected tree or shrub cuttings are planned, the applicant may be required to pay for an inspector, to be assigned by the Village, to supervise the orderly development of the land and ensure the protection of the trees.

- E. The applicant may be required to furnish additional relevant information if necessary to a determination of the permit application.
- F. The application for a permit shall provide for the permission of the property owner for members of the TPC to enter onto the applicant's property and inspect protected trees or shrubs to be destroyed, and such member(s) may be accompanied by a certified arborist. In the event of such an inspection, protected trees or shrubs to be destroyed shall be clearly identified with a bright-colored ribbon or other identifying mark. Such on-site inspection shall be conducted at a reasonable time, and no more than three such on-site inspections shall occur without the subsequent approval of the property owner.
- G. Within 21 days from the date a complete application is submitted, the TPC shall make its decision on the application, and the Village shall thereupon issue or deny the permit request. The failure to act upon the application for a TPC permit within 21 days shall be deemed a granting of the TPC permit.

H. Bonds.

- (1) In certain instances when planting and restoration work shall exceed \$15,000, the TPC may require that an applicant furnish the Village with a performance bond, as approved by the Village Attorney, or a cash deposit to be maintained in a separate escrow account in an amount sufficient to cover 110% of any planting and restoration work required under this chapter as determined by a certified arborist. The total amount of the bond and cash deposit shall reflect all restoration and protection costs upon an individualized determination of each application to which this provision may apply. The bond and/or cash shall guarantee the expeditious performance of any restoration requirement under this chapter. Such bond and/or cash shall be forfeited and applied toward such restoration work to be performed or at the direction of the Village if such restoration work is not performed by or on behalf of the property owner within six months from the date the first protected tree or shrub has been removed under the issued TPC permit.
- (2) Upon completion of all planting and restoration work to the reasonable satisfaction of the TPC, the performance bond shall be canceled and may be replaced by a maintenance bond to be approved by the Village Attorney and to run for a term to be fixed by the TPC, but in no event for a period of more than two years. The cash in escrow shall remain on deposit until the cancellation of the maintenance bond.

- I. The Village may revoke any duly issued TPC permit if the work proposed in the application is not proceeding in an orderly and diligent manner, in accordance with good and acceptable arboricultural practice, or if destruction of protected trees or shrubs not proposed in the TPC permit is undertaken.

§ 202-7. Restoration requirement.

- A. All persons who remove or cause to be removed protected trees or shrubs without first obtaining the required permit under this chapter may be required by the Village to plant one or more replacement trees or shrubs on the property which are of like quality and size. When like-sized replacement is not practical, replacement with a specific quantity of smaller-size trees or shrubs may be required. When restoration is determined by the Village to be impractical or undesirable, an additional fine may be imposed in accordance with the provisions of § 202-9.
- B. All restorative work shall be done in accordance with good and acceptable planting and tree surgery practice.
- C. All trees that fail to survive as a result of the restoration work required under this subsection for a period of two calendar years following planting shall be replaced by the owner of the land. Said replacement shall be within 60 days following written demand from the Village for such replacement, or within an extended period of time as may be specified. Should the property owner fail to replace the trees pursuant to demand within the required period of time, the Village has the right to impose penalties as set forth in § 202-9 of this chapter.
- D. All tree planting, tree dressing and associated restoration work must be substantially completed within six months from the date of issuance of the decision of the TPC, except that the time may be extended by the Building Inspector, whose decision shall be subject to appeal to the Village Board.

§ 202-8. Certificate of occupancy.

No certificate of occupancy shall be issued by the Building Inspector until all tree planting, tree dressing and associated restoration work shall be completed to the reasonable satisfaction of the Building Inspector or designee. In the event that seasonal planting requirements prevent the timely completion of all planting and restoration work, the Building Inspector may issue a certificate of occupancy, together with prescribed

conditions, including but not limited to the requirement of a posting of a bond in an appropriate amount to insure compliance under this section.

§ 202-9. Enforcement; penalties for offenses.

Any person, firm or corporation violating any of the provisions of this chapter shall commit an offense, the fine for which shall be \$500 for each offense. In addition, any person, firm or corporation violating any provision of this chapter may be required to replace such protected tree or shrub with one of similar size and quality as provided in this chapter. When restoration is determined by the Village to be impractical or undesirable, an additional fine may be imposed in an amount not to exceed \$10,000. Additionally, in the case of a violation of the restoration requirements of this chapter where no bond has been required, each calendar day that the violation continues shall constitute a separate offense, punishable by a fine of up to \$100 per offense.

§ 202-10. Prohibited acts and conduct on Village-owned property.

No Village department, agency, commission or authority in the Village of Irvington, or any employee of the Village, or any firm or individual retained by the Village, shall propose to or shall cut down, kill or otherwise destroy more than five protected trees or shrubs in any Village park or on other Village property, with the exception of Village highways, within the Village of Irvington, without first providing written notice to the Village Board of Trustees. The Board of Trustees may consult the TPC and ask for its recommendation on the destruction of said protected trees or shrubs, and the determination of the Village Board of Trustees concerning their destruction shall be final.

§ 202-11. Appeals.

Any property owner who is the subject of any decision under this chapter by the TPC, the Village Clerk or the Building Inspector may, within 10 days of receiving such decision, appeal such decision to the Village Board of Trustees by giving written notice of such appeal to the Village Clerk. The decision of the Village Board of Trustees on any such appeal shall be deemed to be the final decision of the Village of Irvington.