

VILLAGE OF BROCKPORT
CODE REVIEW COMMITTEE MEETING AGENDA

March 19, 2012

- I. Approval of previous minutes
- II. Chapter 46, Trees and Vegetation

Draft 3/11/11 & 3/22/11 3/27/11

Chapter 46

TREES AND VEGETATION

[HISTORY: Adopted by the Board of Trustees of the Village of Brockport 8-18-2008 by L.L. No. 6-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Adoption of Ordinances – See Chapter 2
Local law hearings – See Chapter 28
Berms, fences, hedges and screen plantings — See Ch. 6.
Environmental quality review — See Ch. 17A.
Land subdivision regulations — See Ch. 26.
Stormwater management and erosion and sediment control — See Ch. 27.
Streets and Sidewalks — See Ch 45.
Code enforcement — See Ch. 59.
Uniform Code State of New York

§ 46-1. Title; purpose.

- A. This chapter shall be known as the "Tree/Vegetation Ordinance" for trees, plants and shrubs and is herein referred to as the "Tree/Vegetation Ordinance" or "this chapter."
- B. Purpose. In recognition of the environmental, health, and aesthetic benefits of its urban forest, this chapter establishes the policies, regulations, and standards pursuant to the planting, maintenance, protection, preservation, removal and replacement of trees on public lands within the Village of Brockport. These provisions are enacted to:
- (1) Establish the maximum sustainable amount of tree cover on public lands within the Village.
 - (2) Maintain Village trees in a healthy state and to prevent or control hazardous conditions through good arboricultural practices.
 - (3) Establish and maintain appropriate diversity in genus, species and age classes in order to provide a stable and sustainable urban forest.
- C. **Matters Covered.** This chapter provides for the administration and enforcement of the laws in the Village of Brockport. This chapter is adopted in accordance with Article 21 of the Village Law of the State of New York and Article 3 of the Municipal Home Rule Law of the State of New York except as otherwise provided in the Zoning Code Chapter 58, other state law(s), or other sections of this chapter.

§ 46-2. Jurisdiction; effect on other provisions.

- A. The Village of Brockport shall have full jurisdiction over all trees, plants and shrubs (excluding grass) located within street rights-of-way, public parks, public rights-of-way or easements, and other public places in the Village.
- B. Conflict with other ordinances. In any case where a provision of this chapter is found to be in conflict with a provision of any zoning, land development, safety or health ordinance or code(s) of this municipality, the County of Monroe or the State of New York, the provision which establishes the higher standard for the promotion and the protection of the safety and health of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance of the Code of this municipality existing on the effective date of this chapter which establishes a lower standard for the promotion and protection of the safety and health of the people, the provisions of this chapter shall prevail, and such other ordinances or codes and articles are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.
- C. Partial invalidity. If any section of this chapter shall be held unconstitutional, illegal, invalid, or otherwise unenforceable as violative of state or local laws, the remainder of this chapter shall remain in full force and effect and be enforceable as such.
- D. Nothing in this chapter shall be deemed to abolish or impair existing remedies of the municipality or its officers or agencies relating to the removal of tree(s) which is/are deemed to be dangerous, unsafe or unhealthy.

§ 46-3. Definitions.

For the purpose of this local law, the following words and terms shall be defined as follows, unless otherwise expressly provided:

CODE ENFORCEMENT OFFICER — An officer employed by the Village of Brockport as certified by the State of New York either in the capacity of Code Enforcement Officer, Building Inspector, Fire Marshal, Planning/Zoning Officer, peace officer, Stormwater Manager, Floodplain Administrator, or any combination thereof.

CODE ENFORCEMENT INSPECTOR - Shall be deemed to include the Code Enforcement Officer and all Inspectors employed by the Village of Brockport, as certified by the State of New York either in the capacity of Code Enforcement Officer, Building Inspector, or Fire Marshal, and/or titled as the Assistant Code Enforcement Officer, Assistant Building Inspector, Deputy Fire Marshal, or any combination thereof.

COMPREHENSIVE TREE PLAN — A framework for public tree management that includes an inventory of existing trees; identification of planting sites; a prioritized planting plan; and standards for tree selection, siting, and planting.

DPW — The Department of Public Works of the Village of Brockport.

INVASIVE SPECIES – A non-native plant species that adversely affects the habitats they invade economically, environmentally or ecologically and are listed in either the federal or New York State Invasive Plant inventory. www.dec.ny.gov/animals/265html, www.nyis.info

MASTER TREE LIST –

- A. A compilation of suitable and desirable types and species of trees able to thrive on Village streets and public places within the Village. The master tree list is housed at the Village Office and is drawn from:
- (1) Recommendations from the 2006 Master Tree Inventory Report; and
 - (2) National Grid's "Recommended Small Trees for Planting Under Low Overhead Utility Lines or Confined Spaces" (http://www.nationalgridus.com/non_html/shared_safety_tree.pdf); and
 - (3) Cornell University's "Recommended Urban Trees for USDA Plant Hardiness Zone 6 and Colder" (<http://www.hort.cornell.edu/uhi/outreach/recurbtree/index.html>).
- B. The master tree list also includes a list of trees that should not be planted either because they are inappropriate street trees or because the Village currently has too many of them.

MUNICIPALITY — The Village of Brockport.

PERSON — Any person, firm, partnership, association, corporation, company, or an organization of any kind, including public or private.

PUBLIC PARKS — Public places within the Village of Brockport officially designated as public parks.

PUBLIC PLACE — All grounds owned by the Village of Brockport or under its control or supervision, whether leased or under contract to the Village.

PUBLIC TREE — Any tree growing within the boundaries of a public street or public place.

R.O.W. – See Right-of-Way

Right of Way – An area of public land which may or may not be owned or conveyed to the Village of Brockport over which facilities such as highways, sidewalks or the locations of utility lines are built and which may include an area between a public sidewalk and a street and which can be commonly referred to as the tree lawn.

STREET — The entire width of every public street or right-of-way when any part thereof is open to the use of the public for purposes of vehicular or pedestrian traffic.

SUPERINTENDENT — The department head as employed by the Village of Brockport, who ~~oversee~~ ~~at~~ ~~the~~ ~~expense~~ ~~of~~ ~~the~~ ~~Village~~ ~~of~~ ~~Brockport~~ ~~property~~, streets and roads, rights-of-way and public facilities and services.

TREE BOARD — The Tree Board for the Village of Brockport

TREE BOARD ANNUAL REPORT — An annual written report to the Village Board covering the actions and goals relating to the Village's public trees and including such activities as street

tree inventories, tree plantings and removals, and educational programs for the public.

TREE INVENTORY REPORT — A scientific inventory of Brockport's street and park trees, completed in August 2006, listing species and variety, condition, and maintenance needs. The report identifies scores of trees, tree component(s), and vacant tree spaces.

TREE LAWN — That part of a right-of-way or highway reservation not covered by the sidewalk or other pavement, lying between a property boundary line and that portion of the street usually used for vehicular traffic.

VILLAGE — The Village of Brockport.

VILLAGE BOARD — The Board of Trustees for the Village of Brockport.

§ 46-4. Tree Board.

- A. **Membership.** The Tree Board shall consist of not fewer than five, nor more than ten members recommended by the Mayor and/or the Board of Trustees, being subject to the approval of the Village Board. At least one member should have professional training in forestry and if possible be a resident of the Village of Brockport. If none do, one ex-officio, nonvoting member who has expertise in urban forestry may also be appointed. In addition at least one member should be an employee of the Department of Public Works if possible be a resident of the Village of Brockport. If none do, shall be ex-officio, nonvoting member. Members shall serve for staggered terms of four years and without compensation. If a vacancy shall occur during the term of a member, his or her successor shall be appointed by the Mayor, subject to the approval of the Village Board, to complete the unexpired portion of the term in which the vacancy occurred. The Mayor, subject to the approval of the Village Board, shall also have the power to remove any member of the Board.
- B. **Organization.** Members of the Tree Board shall annually select a Chair and a recording secretary, each to serve a one-year term. The Board shall adopt rules and regulations concerning its governance and operation. A majority plus one of current seated members shall constitute a quorum for conducting business.
- C. **Authorization and duties.** The Tree Board shall be authorized to fulfill the following duties:
 - (1) Coordinate, recommend and implement the care, maintenance and planting of all public trees.
 - (2) Develop a comprehensive tree plan for the Village of Brockport.
 - (3) Develop a list of appropriate tree species for planting in the various types of locales within the tree lawn and public parks.
 - (4) Provide advice and consultation regarding trees to the Village Board, Village employees and private citizens residing in the Village of Brockport.
 - (5) Receive, review, and recommend to the Superintendent of the Department of Public Works requests from property owners for tree plantings, pruning and removals on the tree lawn.

- (6) Regularly communicate with the DPW on all matters regarding Village trees; work closely with the DPW in planning and implementing tree planting; and serve as consultants to the DPW in regard to tree-related problems and hazards.
- (7) Identify and maintain a list of trees within the Village of Brockport that are of historical significance.
- (8) Coordinate activities, including but not limited to the commemoration of Arbor Day, to inform and educate the public about the urban forest.
- (9) Make budget recommendations to the Village Board for Tree Board expenses and purchase of trees.
- (10) Together with the Village, apply for grants related to the planting and maintenance of our community forest.
- (11) Submit an annual report to the Village Board detailing the Board's accomplishments for the year, including plantings, educational outreach, activities coordinated with other committees and boards, etc.
- (12) Review Village policies, resolutions, and local laws impacting trees.

§ 46-5. Regulation of vegetation.

- A. Planting. The Village shall have the responsibility to plant and maintain trees, plants, and shrubs within the right-of-way of all streets, avenues, and highways and on public grounds. The Tree Board will make all reasonable efforts to comply with property owners' requests regarding placement of a tree on the right-of-way adjoining their property.
 - A. Any tree that must be removed shall be replaced by new planting, except in unusual circumstances.
 - B. Trees will be replaced in accordance with the master tree plan developed by the Tree Board.
 - C. No person shall plant any street tree except in accordance with policies, regulations, and specifications established pursuant to this chapter.
 - D. Owners of property adjoining a Village street may request a tree for the tree lawn when one is missing or has been recently removed. Requests will be submitted on the tree request form available at the Village of Brockport Municipal Offices, located at 49 State Street, Village of Brockport, or downloadable from the Tree Board's website link, through www.brockportny.org (see <http://treeboard.brockportny.org> Tree Board.) The Tree Board will select a suitable tree for the location, which takes into consideration:
 - (1) The diversification of our community forest.
 - (2) The specific location.
 - (3) The presence of utility lines and other constricting factors.
- E. Property owners may, at their own expense and with the written approval of the Tree

Board and the Superintendent of the DPW, plant appropriate trees on the tree lawn. The Superintendent of the DPW shall authorize the approved planting in writing and shall approve a map or diagram showing the location of the tree planting. Any tree so planted shall be considered a public tree and be added to the Village Tree Inventory Report.

§ 46-6. Pruning and topping of trees.

- A. Topping of trees is expressly forbidden. Tree pruning shall be accomplished in accordance with the procedures set forth in the most recent ANSI A300 standards.
- B. Tree removal. The Superintendent of the DPW shall treat or remove any public trees that are dead, diseased, or constitute a hazard to life or property. No person other than the Superintendent, or his duly authorized deputy, agent or employee, shall prune, cut down, remove or destroy any public tree on Village property unless authorized by the Superintendent.
 - (1) Requests by persons for removal of diseased or hazardous trees in the tree lawn must be made to the DPW. Trees will be inspected to determine their health and any hazard that they pose. Final decisions regarding removals will be made by the Superintendent of the DPW.
- C. Abatement of hazards; If a tree on property other than lands of the State of New York, County of Monroe, or the Village of Brockport is determined by the Superintendent of the DPW and the Code Enforcement Officer to constitute a public hazard, the owner will be required, by written notification, to trim, remove, or otherwise control the tree to abate the hazard. Failure to do so within 15 days will be deemed a violation of this chapter. The Code Enforcement Officer, by this chapter shall order the removal of the tree or parts thereof deemed a hazard. Failure to comply as directed by the Code Enforcement Officer can result in noticing, ticketing or such other enforcement procedure means and methods set forth in the Code or otherwise permitted by law pursuant to Chapter 59 including the necessary abatement, at the owner's expense, of any such tree or tree parts thereof which constitute an imminent public hazard.
- D. Abatement of hazards, public nuisances or invasive plant species; No person shall allow or permit the harboring of, planting of, or allowing outdoors any type of plant material which may cause harm to the environment or to persons, or which may additionally be listed as prohibited by State of New York or United States regulations.

§ 46-7. Correction of damage due to tree roots.

Where sidewalk or curb damage due to tree roots occurs, every reasonable effort shall be made to correct the problem without removing or damaging the tree. The Superintendent of the DPW shall be responsible for developing or approving corrective measures.

§ 46-8. Cooperation between agencies.

Communication between the DPW and the Tree Board regarding any operations that affect Village trees is essential to the long-term management of the Village's trees. This includes but is

not limited to notification of tree pruning, removals, requests for plantings, utility company activities relating to trees, and Arbor Day and other educational tree programs.

§ 46-9. Planting requirements in new developments.

All new development including but not limited to residential, commercial, industrial, and parking lots, will have appropriate trees planted at the customary density in effect for Village street trees.

- A. Landscaping plans submitted by developers must include the planting of street trees and, if appropriate, park trees that are in compliance with the Tree Board's master tree list in terms of size, species, and density.
- B. The developer assumes the responsibility of tree planting and all irrigation and maintenance for a one-year period from the time of planting and for the replacement of any trees that may die during this period.
- C. Approval by the Village of Brockport Planning Board for new developments is contingent upon submission of a tree planting plan approved by the Tree Board.

§ 46-10. Conservation of forest and woodland resources during development.

Pursuant to § 46-9, for protection of trees, setting standards and limits in areas where land use is intensified, developers shall seek the advice of the Tree Board for planting recommendations.

§ 46-11. Harming public trees.

It is a violation of the provisions of this chapter for any person to abuse, mutilate, or destroy any tree(s), plant(s), or shrub(s) on public lands. This includes posting signs or handbills on trees or allowing any gaseous, liquid or solid substance harmful to trees to come into contact with their roots, trunks, or leaves; exception: unless during application(s) of substances in the performance of the normal maintenance of streets, roads, sidewalks, tree lawns or driveways.

§ 46-12. Enforcement authority.

The Village of Brockport Police Department and/or the Code Enforcement Officer and/or his designee hereunder is/are the official(s) authorized to enforce the provisions of this chapter, by removal, notice, ticketing, etc., or such other enforcement procedure means and methods set forth in the Code or otherwise permitted by law pursuant to Chapter 59.

§ 46-13. Complaints.

The Superintendent of the Department of Public Works shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with this chapter or any other local law or ordinance or regulation adopted for administration and enforcement of the Tree Ordinance. The process for responding to a complaint shall include the following steps, as the Superintendent, at his discretion, may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation and documenting the results of such inspection.

- B. Utilizing the Village of Brockport police and/or the Code Enforcement Officer to carry out enforcement proceedings as deemed appropriate in violations of this chapter or law(s) of the Village of Brockport.

§ 46-14. Penalties for offenses.

Violation(s) of any provision of this chapter shall be an offense, punishable by a fine not to exceed \$350 and imprisonment for up to 15 days for each offense. In the case of a violation consisting of the abuse, damage, mutilation or destruction of more than one tree or shrub on public lands, the damage, mutilation, abuse of, or destruction of each tree or shrub shall be a separate offense. Nothing in this section shall limit the right of the Village of Brockport to pursue any remedy available to it under § 861 of the New York Real Property Actions and Proceedings Law and/or Subdivision (2) of § 382 of the Executive law of New York State.

§ 46-15. Validity.

- A. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter, which shall continue in full force and effect; and to this end, the provisions of this chapter are hereby declared to be severable.
- B. Saving clause. This chapter shall not affect violations of any other ordinance, code or regulation of the municipality existing prior to the effective date hereof, and any such violation shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

§ 46-16. Appeals.

Any persons or entity aggrieved by this Local law and/or the decisions of the Code Enforcement Officer (or his authorized Inspector), the Planning Board, Tree Board for the Village of Brockport, Superintendent of the DPW, or the Brockport Police Department may seek appeal before the Village Board of Trustees, excluding any proceedings or decision made by a Court of Jurisdiction under matters pertaining to penalties for offenses.

§ 46-17. When effective.

This chapter shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with § 27 of the Municipal Home Rule Law.¹

1. Editor's Note: This local law was filed with the Secretary of State 9-2-2008.