

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City of WELLSVILLE
Town
Village

Local Law No. #6 of the year 19 91

A local law regarding trees and shrubs
(Insert title)

Be it enacted by the Board of Trustees
(Name of Legislative Body) of the

County
City of WELLSVILLE
Town
Village as follows:

Article I

STATEMENT OF FINDINGS AND INTENT

The Village Board of Trustees of the Village of Wellsville hereby finds it to be in the best interests of public health, safety and welfare to provide for the planting, protection, maintenance and removal of trees in the public parkways, public terraces and other municipally-owned property within the Village of Wellsville and further finds that the proper maintenance of trees and woody shrubs enhances real property values and preserves the quality and character of neighborhoods. It is, therefore, the intention of this Local Law to provide for the proper planting, protection, maintenance and removal of trees in the public parkways, public terraces and other municipally-owned property within the Village of Wellsville. The application of this Local Law shall be subject to existing or subsequent agreements with the Town of Wellsville for the operation and maintenance of recreational facilities.

Article II

Section 1. Definitions

- 1) Board: Citizens Advisory Tree Board
- 2) Damage: Damage shall mean altering any part of a tree or its immediate environment, whether externally or otherwise evident, which disturbs the healthy functioning of the tree or any of its parts.
- 3) Director: Director shall mean the Director of Public Works or person designated by the Director to supervise and administer this Local Law.
- 4) Park Trees: "Park trees" are herein defined as trees, shrubs, bushes and all other wood vegetation in Memorial Park and all areas of similar character owned by the Village except those areas that pertain to existing or subsequent agreements with the Town of Wellsville for the operation and maintenance of recreational facilities.

(If additional space is needed, please attach sheets of the same size as this and number each)

5) Person: Person shall mean any corporation, firm, partnership, association, trust, estate, one or more individuals, and any unit of government or agency or subdivision thereof.

6) Public tree: Public tree shall mean a tree or shrub located on a public parkway, public terrace or any other municipally-owned property.

7) Remove: Remove shall mean the elimination of a public tree whether by deliberate or negligent act or omission.

8) Street: Street shall mean the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular or pedestrian traffic.

9) Street trees: "Street trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying on public ways within the Village.

10) Tree or shrub: Tree or shrub shall mean any woody plant.

11) Tree Topping: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

12) Indemnify: a. to secure against hurt loss or damage; b. to make compensation to for incurred hurt, loss, or damage

13) Ex-Officio: by virtue of his office

Section 2. Creation and Establishment of a Citizens Advisory Tree Board

There is hereby created and established a Village Citizen's Advisory Tree Board (Board) for the Village of Wellsville, State of New York, which shall consist of five members, citizens and residents of this Village, who shall be appointed by the mayor with the approval of the Village Board of Trustees. The Director shall be an ex-officio member of the Board.

Section 3. Term of Office

The term of the five persons to be appointed by the mayor shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first Board shall be for two years, and the term of one member of the first Board shall be for three years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term.

Section 4. Compensation

Members of the Board shall serve without compensation. They shall be entitled to reimbursement of more than ordinary expenses incurred in the conduct of their duties. Board members shall be indemnified by the Village as to any expenses, claims or damages incurred or awarded against them arising out of the conduct of their duties or the defense thereof.

Section 5. Duties and Responsibilities

It shall be the responsibility of the Board to study, investigate, council and develop and/or update annually, and monitor a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the Village Trustees and upon their acceptance and approval shall constitute the official comprehensive village tree plan for the Village of Wellsville, State of New York. The Board, when requested by the

Village Trustees, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

Section 6. Operation

The Board shall choose its own officers, make its own rules and regulations regarding its function and keep a journal of its proceedings for purposes of administration of this Local Law. It shall yearly post its regular meeting dates and will provide for special meetings as required to fulfill Board functions in a timely manner. A majority of the members shall be a quorum for the transaction of business. Rules and regulations shall be effective after passage and upon filing in the Office of the Village Clerk.

Section 7. Street Tree Species to be Planted

Street trees shall be sized by species as small, medium and large. The following list constitutes examples of small, medium and large trees:

- A) Small - flowering crabapple, service berry, Japanese lilac
- B) Medium - ash honey locust, linden, pin oak,
- C) Large - sugar maple, burr oak

The official Street Tree species which may include shrubs, together with their respective specie size, shall be prepared by the Board. No species other than those included in the Board's list may be planted as Street Trees without written permission of the Citizen's Advisory Tree Board.

Section 8. Spacing

Unless approved in writing by the Board, tree spacing shall be as designated in the Village's master tree plan which shall be readily available for public review. Good tree planting practice required for tree growth, instances affording a clear vehicular line of sight where appropriate and the use of small trees under overhead utility wire shall be paramount elements in the consideration of tree placement.

Section 9. Public Tree Care

The Village shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to promote public safety or to preserve or enhance the symmetry and aesthetics of such public grounds.

The Village may remove or cause or order to be removed, any public tree or part thereof which may be in an unsafe condition, or, which by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insects or other disease pests.

This Section does not prohibit the planting of Street Trees by adjacent property owners. Such practice is encouraged. However to insure that such plantings are in accordance with the Village's master tree plan property owners wishing to plant a Street tree must obtain prior permission from the Board for such plantings.

Section 10. Required pruning--Owner

Any person, being the owner of real property abutting a street, shall prune any tree or shrub on the owner's property so that no tree or shrub shall obstruct or interfere with the free and safe passage of pedestrians on any sidewalk or the free view and safe passage of vehicles on the paved portion of any street or the view of traffic signals or signs.

Said owners shall remove all dead, diseased or dangerous trees or broken or decayed limbs which constitute a menace to the safety of the public. When the Village shall exercise the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign, it shall not charge the abutting owner.

Section 11. Nuisance trees -- Private -- Removed

Any tree or shrub located on private property which obstructs a street, sidewalk, or sewer, or which is dead and threatens the public welfare or which, as determined by a professional consultant, suffers from a communicable disease or insect infestation thereby constituting a real threat to other trees in the Village, or when such tree is not pruned as required herein, is hereby declared to be a public nuisance.

When such a public nuisance exists involving a tree on private property, the Board shall cause a notice to be mailed by certified mail to the owner of the property on which the tree or shrub is located specifying what corrective work is necessary and directing the owner to perform such corrective work to eliminate the nuisance.

Should any ordered correction per the preceding paragraph not be made within thirty (30) days of the date such notice is received, the Director may cause such tree or shrub to be pruned, treated or removed as necessary to eliminate the public nuisance. All expenses involved in such work shall be recorded and the Village Clerk shall be authorized to collect such expenses from the owner of the property on which the tree or shrub is located. The Village may charge the cost thereof on the owner's property tax notice. The Village may institute any action authorized by law or equity, including one to obtain injunctive relief for cost recovery.

Section 12. Tree Topping

It shall be unlawful as a normal practice for any person, firm, or Village department to top any Street Tree, Park Tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Director.

Section 13. Removal of Stumps

All stumps of street and park trees shall be removed six (6) inches below the surface of the ground.

Section 14. Interference with this Local Law

It shall be unlawful and a violation of this Law for any person to prevent, delay or interfere with the Director, or any of his agents, while engaging in an about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, or trees on private grounds, as authorized in this ordinance. This shall not be construed as an attempt to prohibit or delay a public hearing or any legal proceeding to protect property rights.

Section 15. Arborists License and Bond

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating (including application of pesticides), or removing Street or Park trees within the Village without first applying for and procuring a license from the Village Clerk. The license fee shall be \$25 annually in advance; provided, however, that no license shall be required of any public service company or Village employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of statutory

worker's compensation and liability insurance in the minimum amounts of \$300,000 for bodily injury and \$300,000 property damage indemnifying the Village or any other person injured or damaged resulting from the pursuit of such endeavors as herein described. In those cases where license application includes the treating of public trees with pesticides, proof must be presented showing that the licensee holds a N.Y.S. Department of Environmental Conservation (DEC) permit for the application of such pesticides.

Section 16. Prohibitions

No person shall remove damage, cut, carve, prune or otherwise disturb above or below ground any public trees; nor compact, amend, or drive on the soil or otherwise disturb the immediate environment around any public tree; nor attach any rope, wire, nails, political/advertising poster or other artifact to any public tree; nor allow any toxic substance to harm or damage any public tree, nor set fire to or otherwise injure any public tree.

No person shall plant or transplant any public tree except as authorized by permit.

No person shall spray, inject or otherwise apply any fertilizer or pesticide including but not limited to dormant oil, insecticide, fungicide, herbicide, growth regulator, or biological control to any public tree except as authorized by permit.

All application permits referred to shall be made to the Village Clerk and issued by the Clerk upon approval of the Director.

Section 17. Emergency Work

This Local Law shall not govern any emergency activity immediately necessary to protect life, safety or property, or to maintain access to any property. Any such activity shall incorporate reasonable efforts to protect trees and shrubs on village property from unnecessary damage. In the event of an emergency situation which poses a serious or imminent danger to personal injury, rights-of-way, electrical lines or other danger, the Village may in such instances immediately enter on the lands on which such tree or trees are located and alleviate the danger including the removal of the entire tree(s) if necessary. All costs related to such emergency work shall be at the Village's expense.

Section 18. Severability

Should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

Article III

Violation and Penalty

Any person who violates or fails to comply with any of the provisions of this Local Law shall be guilty of a violation, and upon conviction thereof shall be fined a sum not more than two hundred fifty dollars (\$250.00) plus the costs of rectifying damage to any street tree or by imprisonment for not more than 10 days or by both such fine and imprisonment.

The Director shall have the primary responsibility of this Local Law and all rules and regulations written hereunder. The Director, at his discretion, may request an interpretation of this Law from the Board. Responses to interpretations should be given in a timely and responsible prompt manner.

The Director may, for good cause, modify provisions of this Law including the granting of waiver or variance to any part thereof. Such action wherever possible shall be taken following consultation with the Board. In those cases where prior consultation is not possible, the Director shall advise the Board of such action at the earliest time possible.

Article IV

Hearing

Any person affected by an order, grant or denial of a permit or other written decision of the Director, when such decision is based on the provisions of this Law, may request a Board hearing concerning such order, grant, denial or revocation of a permit or other decision by the Director.

Such request for hearing shall be filed in writing with the Village Clerk within fourteen (14) days of the date of the notification of the Director's ruling.

Unless continued at the request of the applicant, any hearing by the Board shall be no later than the second regularly scheduled Board meeting following the filing of the request for hearing.

The Board shall, following such hearing, advise the Director in writing of their findings including any recommendations concerning the matter of the hearing. The Director may reverse or affirm or modify wholly or partly, the order, grant, denial or revocation of any permit, or other decisions he may have made. A stay of the Board order during the hearing phases shall be applicable.

Should the Board and the Director agree on action taken or to be taken by the Director, the Director with copy to the Board shall advise the petitioner in writing of such findings. This decision shall be final.

Should the Board disagree with the action taken by the Director, the Director will so advise the petitioner including the petitioner's right to a hearing by the Village Board. This shall be in writing. If a Village Board hearing is desired, the Director will in a timely manner arrange for such a hearing. The findings of the Village Board shall be final.

The right of a Board hearing shall be clearly stated on all permits.

Article V

This Local Law shall take effect immediately.

(Complete the certification in the paragraph which applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. ...6... of 1991...
County
City
of the Town of ...WELLSVILLE... was duly passed by the ...BOARD OF TRUSTEES...
Village (Name of Legislative Body)
on ...11-25... 1991 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval or no disapproval by Elective Chief Executive Officer,* or repassage after disapproval.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19.....
County
City
of the Town of was duly passed by the
Village (Name of Legislative Body)
on 19 not disapproved
and was approved by the
repassed after disapproval Elective Chief Executive Officer*
and was deemed duly adopted on 19, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19.....
County
City
of the Town of was duly passed by the
Village (Name of Legislative Body)
on 19 not disapproved
and was approved by the
repassed after disapproval Elective Chief Executive Officer*
on 19 Such local law was submitted to the people by reason of a
mandatory referendum, and received the affirmative vote of a majority of the qualified electors voting
permissive general
thereon at the special election held on 19, in accordance with the applicable
annual provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19.....
County
City
of the Town of was duly passed by the
Village (Name of Legislative Body)
on 19 not disapproved
and was approved by the
repassed after disapproval Elective Chief Executive Officer*
on 19 Such local law was subject to a permissive referendum and
no valid petition requesting such referendum was filed as of 19
in accordance with the applicable provisions of law.

*The Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village or the supervisor of a town where such officer is vested with power to approve or veto local laws or ordinances.



5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the City of having been submitted to referendum pursuant to the provisions of ^{§36}~~§37~~ of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the ^{special}~~general~~ election held on 19..... became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the County of, State of New York, having been submitted to the Electors at the General Election of November, 19....., pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.
(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph above.


..... Village Clerk or
officer designated by local legislative body

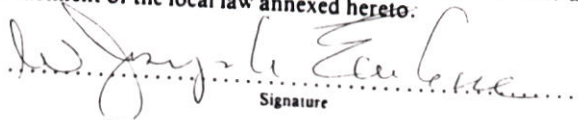
Date: 11-26-91

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF ALLEGANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto:


.....
Signature

W JOSEPH EMBSER Title VILLAGE ATTORNEY

Date: NOV 27 1991

~~COUNTY~~
~~CINXXX~~
~~CINXXX~~ of WELLSVILLE
Village

