AGENDA ITEM # 12

TOWN OF GUILDERLAND
LOCAL LAW NO. 9 OF 2022
(ADOPTING RULES & REGULATIONS FOR THE PROTECTION AND PRESERVATION OF NATIVE TREES)

Be it enacted by the Town Board of the Town of Guilderland that the following provisions shall be added to Town Code Chapter 201 (Tree Preservation and Protection):

SECTION 1. The following additions are made:

§ 201-1 Purpose.

The intent of this chapter is to preserve, protect, and enhance the Town of Guilderland's natural environment through tree protection, preservation and sustainable planting. The planting of native trees and appropriate landscaping in sufficient amounts and proper locations helps promote the health and welfare of a community, and contributes to the environment's biodiversity. These plantings also provide shade, improve air quality, and reduce noise and light infiltration, and help with storm water management, prevent erosion and flooding, and provide critical protection and habitat for wildlife. The Town Board delegates responsibility for managing the Town's community forest to the Tree Preservation Committee for the benefit of the Town's current residents and future generations.

§ 201-2 Definitions.

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

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE (ASSP)

Detailed specifications and standards of practice regarding arboricultural activities including, but not limited to, selection of appropriate trees and location, site preparation and tree planting, maintenance, removal, replanting and replacement, and best practices for use by a review board considering a land development activity application and by individual property owners.

CONSTRUCTION ACTIVITY

Means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original

purpose of a facility.

DEVELOPER

Any person who shall file an application for land development activity or may physically alter a site approved for development, and any owner of land approved for development.

FORESTRY PLAN

A written review and description of Town forestry goals, objectives and such related activities as updating the APPS and the Master Tree List, conducting street tree surveys, planting trees and sponsoring educational programs for the public, and best practices for maintaining and replacing trees. It shall include recommendations by the NYS Department of Environmental Conservation, Albany Pine Bush Preserve, and environmental organizations regarding native, non-native, and invasive species.

HIGHWAY

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 and pedestrian traffic.

HIGHWAY SUPERINTENDENT

The highway superintendent of the Town of Guilderland or his designee.

LAND DEVELOPMENT ACTIVITY

An activity including clearing, grading, excavating, soil disturbance, or placement of fill resulting in land disturbance of more than one acre of land, including, but not limited to, a subdivision, planned unit development, site plan approval or special use permit. Also includes activities disturbing less than one acre of total land area that are part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

MASTER TREE LIST

A listing of suitable and desirable types and species of trees able to thrive near Town highways and within public places of the Town and best practices for maintaining and replacing trees.

PARKS DIRECTOR

The director of the Department of Parks & Recreation of the Town of Guilderland or his designee.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind, including public utility and municipal department.

PRESERVATION

To keep a tree or shrub from harm, damage or danger, and to protect and save a tree or shrub.

PRUNE

To remove dead or living parts from a tree or shrub to increase health, vigor, and maintain a desired shape or size.

PUBLIC PLACE

All grounds owned by the Town or under its control or supervision, whether owned, leased or under contract of the Town.

PUBLIC TREE

Any tree now or hereafter growing within the bounds of any Town highway or public place.

REMOVAL/REMOVE

To take away and remove a tree or shrub, including the stump to below ground level.

REVIEW BOARD

The board that issues the approval or advisory opinion for a land use development activity application.

SHRUB

A woody plant with more than one main stem emerging from the ground.

STREET TREE

Any tree planted or growing within the right-of-way of a public street with at least one single central axis (trunk) at least four inches in diameter measured at a height of four feet above the ground.

TOWN

The Town of Guilderland, lying within the County of Albany, State of New York.

TOWN TREE LAWN

That part of a street or highway not covered by the sidewalk or other paving lying between the property line and that portion of the street or highway usually used for vehicular traffic.

TREE

A woody plant with at least one single central axis (trunk) at least 12 inches in diameter measured at a height of four feet above the ground and having a defined crown, except for a Street Tree as defined above.

§ 201-3 Establishment of Tree Preservation Committee.

A. **Creation.** The Tree Preservation Committee is created under this chapter.

B. **Members, Term, and Chair.** The Tree Preservation Committee shall have five members appointed to three-year terms by the Town Board who shall appoint the Chairperson. For the initial term, three members shall be appointed for three-year terms and two members shall be appointed for two-year terms. The Town Board shall endeavor to appoint at least one member who is professionally trained or has a background or degree in forestry, botany, horticulture or landscape architecture. If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

C. **Removal.** The Town Board shall have the power to remove any member of the Tree Preservation Committee for cause and after a public hearing.

D. **Chairperson duties.** All meetings of the Tree Preservation Committee shall be held at the call of the Chairperson and at such other times, as such Board may determine.

§ 201-4 Forestry Plan.

The Tree Preservation Committee shall prepare and update a written Forestry Plan and shall review the approved plan on an annual basis. Upon its acceptance and approval by the Town Board, the plan, as may be amended, shall constitute the official Forestry Plan for the Town. The Forestry Plan shall define the annual goals and objectives, include a current statement of ASSP and current Master Tree List. Nothing contained in the Forestry Plan or the ASSP shall abridge the authority of the Highway Superintendent as provided for in the NYS Highway Law.

§ 201-5 Administration.

The Highway Superintendent shall administer the Forestry Plan in Town highways and the Parks Director shall administer the Forestry Plan in public places. A review board shall consider the Forestry Plan and any report by the Tree Preservation Committee under § 201-10 in reviewing applications for land development activity.

§ 201-6 Removal and Replacement.

A. No person shall remove, clear or cut all or substantially all of the trees, shrubs or brush on any area of land in the Town measuring 10,000 or more square feet except pursuant to and in conjunction with an approved subdivision plan, approved site plan, approved special use permit, building permit or part of a recognized agricultural practice.

B. The Highway Superintendent shall treat or remove public trees that, in his determination, are dead or diseased and constitute a hazard to life and property or a threat to other trees in the Town. No person other than the Highway Superintendent or his duly authorized deputy or agent shall prune, cut down, remove or destroy any tree standing or lying on land within the bounds of any Town highway or Town tree lawn. The Highway Superintendent shall see that all removal work on public trees is performed in accordance with the ASSP included in the Forestry Plan and is reported to the Tree Preservation Committee within 14 days.

C. The Highway Superintendent and Parks Director shall provide that trees removed from Town tree lawns and public places of the Town are replanted or replaced in accordance with the Forestry Plan. If conditions prevent planting at the removal site, a tree removed from the Town tree lawn or public place may be replanted or replaced at an alternative site preferably in the same or neighboring Town tree lawn or public place. The species, number, and location of the trees shall be reported to the Tree Preservation Committee within 14 days.

§ 201-7 Planting by property owner.

The owner of property adjoining a Town highway may, at their own expense, plant trees

in the tree lawn adjacent to their property, with the approval of the Highway Superintendent. Approval shall be granted if the planting proposed is in accordance with the ASSP included in the Forestry Plan and if trees to be planted are selected from the Master Tree List included in the Forestry Plan. The Highway Superintendent shall authorize approved planting by a written order that shall include a map or diagram showing the location of each approved tree planting. The order shall be filed with the Town Clerk within 14 days of its issuance and a copy provided to the Tree Preservation Committee.

§ 201-8 Maintenance.

A. All work on trees in Town tree lawns and public places of the Town shall be performed in accordance with the included in the Forestry Plan.

B. No person, other than the Highway Superintendent, Parks Director or their designees shall fertilize, spray, cable or brace, trim, prune, cut above ground or below ground or otherwise disturb any heritage tree or public tree without first obtaining a permit from the Highway Superintendent, Parks Director or their designees who shall issue a permit if he determines that the work proposed is necessary and that the methods and workmanship proposed are satisfactory. The Highway Superintendent, Parks Director or their designees shall supervise and inspect all work on public trees done under permit. The Tree Preservation Committee shall be notified within 14 days of the issuance of a permit.

§ 201-9 Damage or defacement prohibited.

A. No person, other than the Highway Superintendent, Parks Director or their designees, shall cut, carve, injure, harm or damage to a public tree, heritage tree, and any tree in Town tree lawns and public places of the Town; attach any rope, wire, nails, advertising posters or other contrivance to any tree; allow any gaseous liquid, chemical or solid substance which is harmful to trees come into contact with any tree; or set fire or permit any fire to burn such fire or generate heat thereof that would injure any portion of any tree.

B. No person, other than the Highway Superintendent, Parks Director or their designees, shall undertake any excavation or fill, construction or street work near any public tree until said tree shall be safeguarded by such high visibility barriers or other protective measure as shall effectually prevent injury to any part of any tree and its root system to the satisfaction of the Highway Superintendent. No person shall excavate any ditches, tunnels or trenches, otherwise change the grade of any terrain or lay any drive within a radius of 15 feet from any public tree without the written approval of the Highway Superintendent.

C. No person, other than the Highway Superintendent, Parks Director or their designees, shall deposit, place, store or maintain upon any Town tree lawn or public place of the Town any stone, brick, sand, fill dirt, concrete or other materials that may impede the free passage of water, air and fertilizer to the root system of any tree.

§ 201-10 Land development and construction activity.

For any land development or construction activity, the following shall apply:

A. The chairperson or designee of the Tree Preservation Committee shall be a member of the Town's Development Planning Committee.

B. Before undertaking land development or construction activity, the developer or landowner shall submit the following: (1) a site plan that identifies trees by size, species and condition, and (2) an aerial image no more than six years old with an overlay of the proposed development or construction areas. The developer or landowner shall also tag any tree at least 12 inches in diameter measured at a height of four feet above the ground and having a defined crown.

C. The Tree Preservation Committee or Conservation Advisory Council may conduct site visits to review the submitted site plan and trees flagged for preservation to determine if additional trees should be recommended for preservation by the review board. The review board shall include this information in its determination of which trees shall be preserved and so designated on the approved final site plan, and the appropriate escrow by the developer or landowner for inspection of preserved trees.

D. The developer shall mark trees to be preserved by the review board with flagging and safeguard them by high visibility barriers or other protective measures to prevent injury to the tree and its root system during construction, including, but not limited to, soil compaction, grade change, root severance, drainage change, soil chemistry change and trunk and limb impact change.

E. The developer shall provide the review board with a written inspection report of the condition and protection of trees to be preserved at three stages: prior to site disturbance, prior to the issuance of a building permit, and prior to certificate of occupancy issuance. The inspection shall be conducted by a member of the American Society of Consulting Arborists or qualified professional experienced in tree preservation as approved by the Tree Preservation Committee. A copy of the inspection report shall be provided to the Tree Preservation Committee.

F. If the Tree Preservation Committee or review board finds that there has been a violation of this section, it shall notify the developer and provide up to 10 days to correct the violation. In addition to any other penalties set forth herein, failure to

correct the violation in the designated time period shall result in the revocation of any outstanding permits or approvals associated with the land development or construction activity.

G. Prior to the issuance of a certificate of occupancy, the developer shall provide to the Town moneys equal to the value of any tree designated for preservation that is removed or injured or that died as a result of construction. The value shall be determined in accordance with the latest revision of A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens, published by the International Society of Arboriculture.

§ 201-11 Penalties for offenses.

A violation of this chapter is an offense punishable by fine and/or imprisonment, and other penalties contained in § 280-59.

SECTION 2. SEQRA Determination. The Town Board declares that this Local Law is an Unlisted Action under the State Environmental Quality Review Act and determines that it will not have a significant impact upon the environment and that a negative declaration should issue.

SECTION 3. Inconsistency. Any local law, ordinance, resolution or portions thereof of the Town of Guilderland not consistent with this Local Law in whole or in part shall be repealed.

SECTION 4. Severability. If any provision of this Local Law or the application thereof shall be adjudged invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Local Law shall not be affected thereby.

SECTION 5. Effective Date. This Local Law shall become effective upon filing with the Secretary of State.