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MEMORANDUM

TO: Town Board

FROM: Office of the Town Attorney

DATE: September 4, 2026

RE: Critical Root Zone- Tree Protection Legislation

The proposed amendments to Town Code § 102-7(B) would add requirements concerning the protection of Town-owned trees located within Town rights-of way during construction.

The proposed legislation adds a new § 102-7(B)(1)(i), requiring building permit applications for work reasonably likely to affect a Town-owned tree to include information requested by the Building Inspector, in consultation with Natural Resources, demonstrating compliance with the applicable tree protection requirements, which will be enumerated in § 102-7 (B)(4).

§102-7(B)(4) provides that where the building department, together with the natural resources department, determines that a Town-owned tree is reasonably likely to be affected by proposed work, the applicant would be required to establish a protective area around the tree, install an approved protective barrier, and provide photographs demonstrating compliance, prior to the issuance of a building permit.

The protective measures would be required to remain in place throughout construction. The proposed amendments authorize the Building Inspector to issue a stop-work order if the required protection is removed, relocated, damaged or otherwise compromised. The Natural Resources Department, together with the Building Inspector, would also have discretion to approve alternative protective measures where strict compliance is impracticable due to site-specific conditions, provided the alternative measures provide substantially equivalent protection.

The proposed amendments are intended to incorporate protection of Town-owned trees directly into the building permit review and construction process and to establish clear requirements for the protection and enforcement of such measures.

§ 102-7 **Application for building permit.**

[Amended 5-19-2022 by L.L. No. 14-2022; 12-5-2024 by L.L. No. 24-2024]

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B. Application to Building Inspector.

(1) Application for a building permit shall be made to the Building Inspector on forms provided by him and shall contain the following information:

- (a) A description of the land on which the proposed work is to be done;
- (b) A statement of the use or occupancy of all parts of the land and of the building structure;
- (c) The valuation of the proposed work;
- (d) The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations;
- (e) A brief description of the nature of the proposed work;
- (f) A duplicate set of plans and specifications as set forth in Subsection C(1) of this section; and
- (g) Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, ordinances and regulations.
- (h) A staked survey, prepared by a New York State licensed surveyor, indicating:
 - [1] The clearing limitations ("envelope") for the subject property, in accordance with the East Hampton Town Code; and
 - [a] The following exceptions shall apply:
 - [i] Lots with legally preexisting clearing;
 - [ii] Proposed structures/items located in an area shown on a current survey of the property as already cleared.
 - [2] The elevations at the four corners of a property as well as the overall highest and lowest elevations of the parcel. If there is more than a four foot difference between the stated elevations, the Building Inspector shall also require topography with two-foot contour lines on the survey.
 - (i) **Tree Protection.** Where the proposed work is reasonably likely to affect a town-owned tree located within a town right-of-way, as determined by the Department of Natural Resources, the application shall include such information as may be required by the Building Inspector to demonstrate compliance with the tree-protection requirements of this subsection, including the location and size of any such tree and the proposed measures for protecting the tree during construction. For purposes of this Section 102-7, references to approvals by the Department of Natural Resources, shall mean approval by the Environmental Protection Director, or his or her designee.

(2) Application shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work.

(3) Failure to comply with any of the above provisions shall result in the nonissuance of building permit or revocation of building permit pursuant to § 102-11, and/or issuance of stop-work order pursuant to § 102-12.

(4) Tree Protection requirements.

(a) Prior to issuance of a building permit for the work subject to Paragraph (1)(i) of this subsection, the Building Inspector shall consult with the Department of Natural Resources, to determine, whether any Town-owned tree located within a Town right-of-way is reasonably likely to be affected by the proposed work.

For the purposes of this Section, a **Town-owned tree** shall mean any living-tree located within a Town owned right-of-way or other property owned by the Town, excluding trees expressly designated by the Town for removal. **Town Right-of-Way** shall be defined as any right-of-way, easement, strip or parcel of land owned, or dedicated to and accepted by the Town of East Hampton, for use as a public highway, street, sidewalk, roadway, drainage area, pedestrian or other public right of way, including the area between the traveled way and the adjoining private property.

(b) Where the Department of Natural Resources determines that a Town-owned tree is reasonably likely to be affected by the proposed work, the applicant shall establish a protective area around the tree prior to the commencement of construction and issuance of a building permit. The protective area shall have a diameter equal to fifteen (15) times the diameter of the tree measures at breast height ("DBH").

(c) The protective area shall be enclosed with securely installed orange plastic safety fencing, snow fencing, or other protective barrier, supported by sturdy poles sufficient to maintain the barrier throughout construction. Generally, fencing material shall be secured to 2x2 wood stakes or metal fence posts placed 4 in. minimum above grade or 2 in. min below grade. However, alternative protective measures may be approved by the Department of Natural Resources.

(d) Prior to the issuance of the building permit, the applicant shall submit photographs demonstrating installation of the required tree-protection measures. The Building Inspector shall not issue the building permit until the required protection has been installed, and the required photographs have been submitted to and approved by the Department of Natural Resources.

(e) The owner, applicant and/or person responsible for the construction shall maintain the required tree-protection measures throughout the duration of construction and shall not remove, relocate, alter or otherwise compromise such measures without prior written approval of the Department of Natural Resources.

(f) Where the Building Inspector determines that the required protective measures have been removed, relocated, damaged or otherwise compromised, the Building Inspector

may issue a stop -work order pursuant to § 102-12 until the required protective measures have been restored.

(g) The Building Inspector, together with the Department of Natural Resources, may approve an alternative protective measure where strict compliance with the requirements of this subsection is impracticable due to site-specific conditions, provided that the alternative measures provides substantially equivalent protection to the Town- owned tree.