

**\*AS AMENDED**

**2020-209**

ENACTMENT: ADOPT LOCAL LAW INTRODUCTORY NO. 11-2020 TO ESTABLISH CHAPTER 132 (LANDSCAPING) OF THE CODE OF THE TOWN OF HUNTINGTON

Resolution for Town Board Meeting Dated: March 31, 2020

The following resolution was offered by: **COUNCILWOMAN CERGOL  
SUPERVISOR LUPINACCI  
COUNCILMAN SMYTH**  
and seconded by: **COUNCILMAN CUTHBERTSON**

THE TOWN BOARD having held a public hearing on the 10<sup>th</sup> day of March, 2020 at 7:00 p.m. to consider adopting Local Law Introductory No. 11-2020 amending the Code of the Town of Huntington to establish Chapter 132 (Landscaping), and due deliberation having been had; and

WHEREAS, pursuant to §617.5(c) (26 & 33) of the SEQRA the adoption of regulations, amending the Code of the Town of Huntington is a “routine or continuing agency administration and management, not including new programs or major reordering of priorities” and “promulgation of regulations, policies, procedures, and legislative decisions in connection with any Type II action,” and therefore this proposed action is a Type II action, requiring no further action pursuant to SEQRA.

NOW, THEREFORE, THE TOWN BOARD

HEREBY ADOPTS Local Law Introductory No. 11-2020 amending the Code of the Town of Huntington to establish Chapter 132 (Landscaping), as follows:

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HUNTINGTON, AS FOLLOWS:

LOCAL LAW 13 - 2020  
AMENDING THE CODE OF THE TOWN OF HUNTINGTON  
TO ESTABLISH CHAPTER 132 (LANDSCAPING)

Section 1. Chapter 132 (Landscaping) of the Code of the Town of Huntington is hereby established as follows:

CHAPTER 132 LANDSCAPING

§132-1. - Legislative Intent.

The Board finds that it is in the best interest of the Town of Huntington to establish Chapter 132 of the Town Code entitled “Landscaping” in order to regulate commercial landscaping activities within the Town.

This Local Law establishes Chapter 132 of the Town Code entitled “Landscaping” to advance the interests of Town residents in encouraging green landscaping practices, protecting public health by reducing emissions from the use of gas-powered leaf blowers, and deterring unlicensed commercial landscapers.

The Board enacts this law after discussions with concerned residents about gas-powered leaf blowers and after reviewing legislation enacted by other communities on gas-powered leaf blowers.

Based on this research, the Board finds that certain commercial landscaping activities may pose a risk of noise, odor, pollution or other nuisances and may otherwise disturb the public health and welfare of Town residents. Scientific studies have been presented to this Board indicating that emissions from gas-powered leaf blowing equipment can cause deleterious health effects for those in the vicinity of their use. Further, the use of this equipment causes an unreasonable amount of noise that is detrimental to the enjoyment of property within the Town. These issues have garnered attention in New York and nationally, with a growing number of municipalities choosing to regulate gas-powered leaf blowers. The Board also finds that certain landscaping companies operate within the Town without the required license issued by Suffolk County. Unlicensed landscapers may operate without the required insurance which is detrimental to the community at large and unlicensed landscapers also operate to the detriment of licensed landscapers adhering to all of Suffolk County’s licensing requirements. While it may be difficult for the County to bring enforcement actions against unlicensed landscapers operating within the Town of Huntington, the Town may now be in a better position to do so.

It is the intent of this law to use the Town’s power under New York State Town Law and the Municipal Home Rule Law to limit the use of gas-powered leaf blowers and to create a registration procedure within the Town of Huntington for commercial landscapers holding a valid license issued by Suffolk County. Landscapers holding a valid Suffolk County license to conduct commercial landscaping within Suffolk County will now be required to register with the Town of Huntington and obtain registration decals issued by the Town Clerk. These decals will be required to be affixed to each landscaping truck operating within the Town of Huntington and failure to do so will be a violation under this Code.

§132-2. Definitions.

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

COMMERCIAL LANDSCAPING: The business or trade of rendering any landscaping services, as defined herein, either as principal, independent contractor, or through an agent or employee, for a fee, charge, or other compensation, to or for the benefit of any owner, tenant, or occupant of any lot, plot, or parcel of land.

GAS – POWERED LEAF BLOWER: Any device powered by a gasoline, diesel or similar fuel engine which is used, designed or operated to produce a current of air for the

purpose of pushing, propelling or blowing leaves, dirt, gardening and grass clippings and cuttings, refuse or debris.

HOLIDAYS: New Year’s Day, Martin Luther King, Jr. Day, President’s Day, Memorial Day, the Fourth of July, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

COMMERCIAL LANDSCAPER: An individual, firm, corporate or other entity performing commercial landscaping services.

LANDSCAPING: The maintaining of and/or providing care of lawns, including but not limited to mowing, cutting and trimming, also the gathering, raking, blowing, and/or removal of leaves, grass or lawn clippings and/or other debris, on any lot, plot or parcel of land. This includes regular maintenance as well as fall and spring clean-ups.

REGISTRY: A registry of commercial landscapers holding a valid license issued by Suffolk County, and registering with the Town Clerk in accordance with the procedure set forth in this chapter.

TOWN: The Town of Huntington

TOWN CLERK: The Town Clerk of the Town of Huntington

§132-3. (Reserved)

§132-4. Registration; exceptions.

(A) Any commercial landscaper performing commercial landscaping within the Town of Huntington shall register with the Town Clerk and obtain a current registration decal issued by the Town Clerk, and affix the Town registration decal to each landscaping vehicle to be utilized within the Town of Huntington pursuant to the requirements of this chapter. Failure to obtain a registration decal shall be a violation and failure to display the registration decal shall be a separate violation.

(B) Commercial landscaping may be performed without a Town registration decal by:

1. An employee of the owner, lessee, or occupant of the property on which the work is being performed, provided that such employee does not provide commercial landscaping for other properties with the Town within any one calendar year, and such employee has no employees of his or her own who are performing commercial landscaping within the Town. The term “employee” as used in this section is limited to persons who are treated by the property owner, lessee, or occupant as an employee pursuant to all New York State and federal labor and income tax laws.

2. A person who is less than 21 years of age and who is performing the commercial landscaping for his or her own account and not as an employee of another person or entity and has no employee of his or her own over the age of 21 who are performing commercial landscaping within the Town.

§132-5. Application procedure; fee; expiration; decals.

- A. (1) Any landscaper applying to register with the Town of Huntington shall file with the Town Clerk a written application upon forms to be furnished by the Town Clerk. Each application shall be accompanied by a copy of a valid license issued by Suffolk County necessary to conduct commercial landscaping within Suffolk County.  
(2) Any applicant seeking to register with the Town of Huntington shall provide the following information; name of commercial landscaper (sole proprietorship, partnership, corporation, or other) as it appears on the Suffolk County license, address, contact person with primary and secondary phone numbers, vehicle registration, make, and license plate number for each vehicle to be utilized for commercial landscaping within the Town, and the Suffolk County license number as set forth on the accompanying copy of the valid Suffolk County license. The Town Clerk will issue the applicant a registration number and registration decal upon the submission of required information and documentation and filing fee if applicable. The registration decal shall set forth the registration number.
- B. (1) Each applicant seeking to register with the Town of Huntington shall pay a nonrefundable filing fee with the application. There shall be a filing fee of fifty (\$50.00) dollars. The filing fee shall include the issuance of one (1) Town registration decal. There shall be a five (\$5.00) fee for each additional decal required.  
(2) The Town Clerk shall charge no filing fee for any applicant registering with the Town for the first time who can provide receipts showing that five (5) or more pieces of landscaping equipment powered by electric or battery motors have been purchased by the applicant for use in its commercial landscaping business within the last year. The applicant must submit a signed certification, on a form prepared by the Town, confirming the receipts are accurate and the applicant's intent to use the equipment. In addition to providing receipts, applicants shall also provide to the Town Clerk any additional documents requested for each piece of electric or battery operated landscape equipment purchased. Failure to utilize such equipment subsequent to submitting the signed certification shall be deemed a violation.
- C. All Town of Huntington registration decals issued pursuant to this chapter shall be in effect for one (1) year commencing on April 1<sup>st</sup> of each calendar year and expiring on the last day of March of each calendar year. Landscapers shall renew their registration with the Town annually upon the filing of a renewal application

and payment of a renewal fee in an amount of thirty (\$30.00) dollars. A copy of a valid Suffolk County license shall accompany the renewal application. The renewal fee shall include one (1) Town registration decal. There shall be a five (\$5.00) fee for each additional decal required. Any landscaper not renewing for a year shall be considered a new applicant.

D. The Town shall provide registration decals to each registered landscaper, which decal shall be conspicuously affixed to the driver's side of every truck, dump truck, van or other motor vehicle owned, leased or otherwise used by any person engaged in commercial landscaping at all times when the vehicle is located within the Town. Such decal shall be visible to any peace or police officer and any inspector, official, officer or employee of the Town or other governmental agency or authority. Failure to do so shall be a violation of this chapter. Each truck, dump truck, van or other motor vehicle without a registration decal affixed shall be considered a separate violation.

§132-6. Regulations.

A. No commercial landscaper or other person within the employ or control of a commercial landscaper shall:

1. Perform commercial landscaping within the Town of Huntington without having registered with the Town Clerk.
2. Perform commercial landscaping within the Town of Huntington without displaying the registration decals issued by the Town Clerk.
3. Blow, rake, place, spill, dump, or otherwise deposit, any leaves, grass, garbage, refuse, cuttings, wood, or other materials or debris from one property onto any public property, including, but not limited to, streets, sidewalks and rights-of-way, or the private property of another person, without such other person's permission and not clean it up and remove it within the same day. In any prosecution for a violation of this provision, it shall be an affirmative defense that such other person gave the alleged offender permission to blow, rake, place, spill, dump or otherwise deposit such material or debris on such other person's property.
4. Remove leaves, clippings or other yard waste in a truck, dump truck, van, or other motor vehicle, trailer, container, or other towable device without securing a tarpaulin or other cover to prevent spillage where such leaves, clippings or other yard waste do not remain on the property as mulch.
5. Spill or dump any oil, gasoline or other petroleum products within the Town.

6. Operate any equipment in violation of Chapter 141 of the Town Code.
7. Operate more than two (2) hand-held or backpack-mounted gas-powered leaf blowers at any given time on properties of a half-acre or less in residential districts.
8. Burn any wastepaper, rubbish, leaves, cuttings, woods, or other waste materials.

B. All commercial landscaping shall be performed in accordance with the laws, ordinances, rules, and regulations of the United States, the State of New York, the County of Suffolk and the Town.

§132-7 through §132-10. (Reserved)

§132-11. Penalties for violations

A. Any person or persons who shall violate any of the provisions of this chapter, except a violation of §132-(6)(A)(1) and §132-(5)(B)(2), shall upon conviction be subject to the following penalties:

1. For a first offense, by a fine of not less than \$250 and not more than \$500.
2. For the second of two offenses, both of which were committed within a period of three years, by a fine of not less than \$500 and not more than \$1,000.
3. For a third or subsequent offense, all of which were committed within a period of five years, by a fine of not less than \$1,000 and not more than \$5,000 or by imprisonment not exceeding 15 days, or by both.

B. Notwithstanding any other provision of this chapter to the contrary, any person or persons who violates §132-(6)(A)(1) of this Chapter shall upon conviction be subject to the following penalties:

1. For a first offense, by a fine of not less than \$500 and not more than \$1,000.
2. For the second of two offenses, both of which were committed within a period of two years, by a fine or not less than \$1,000 and not more than \$2,500 or by imprisonment not exceeding 10 days, or by both.
3. For a third or subsequent offense, all of which were committed within a period of five years, by a fine of not less than \$2,500 and not more than \$5,000 or by imprisonment not exceeding 15 days, or by both.

C. Notwithstanding any other provision of this chapter to the contrary, any person or persons who violates §132-(5)(B)(2) of this Chapter shall upon conviction be subject to a fine no lower than fifty (50.00) dollars nor more than two hundred (\$200.00) dollars.

D. Any person who found by the Bureau of Administrative Adjudication to have violated this Chapter shall likewise be subject to a monetary penalty in an amount within the range of fines authorized in subdivisions A, B and C for the respective violations referenced therein for a first offense and subsequent offenses.

Section 2. Severability.

If any clause, sentence, paragraph, subdivision, section, or other part of this local law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, and it shall be construed to have been the legislative intent to enact this local law without such unconstitutional or invalid parts therein.

Section 3. Effective Date.

This local law shall take effect immediately upon filing in the Office of the Secretary of the State of New York.

ADDITIONS ARE INDICATED BY UNDERLINE  
\*\*\* INDICATES NO CHANGE TO PRESENT TEXT  
DELETIONS ARE INDICATED BY [BRACKETS]

VOTE:                                      AYES: **4**                      NOES: **1**                                      ABSTENTIONS: **0**

Supervisor Chad A. Lupinacci                      **AYE**  
Councilwoman Joan A. Cergol                      **AYE**  
Councilman Eugene Cook                      **NO**  
Councilman Mark A. Cuthbertson                      **AYE**  
Councilman Edmund J. Smyth                      **AYE**

THE RESOLUTION WAS THEREUPON DECLARED DULY ADOPTED