

25-27 TREE PROTECTION AND REMOVAL.

25-27.1 Title.

This chapter shall be known as the "Tree Protection and Removal Ordinance of the Township of West Orange." (Ord. No. 2357-12 § 25-27.1)

25-27.2 Findings and Purpose.

a. The Township Council of the Township of West Orange finds that: trees are among the Township's most valuable natural resource assets, greatly enhancing the appearance of the Township and contributing to its suburban residential character; the integrity of Township and regional water resources is substantially affected by development on constrained land (e.g., steep slopes, wetlands and reduced depth to groundwater), tree removal, soil disturbance, stormwater management and the general use of land resources; the preservation, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation, reduces stormwater runoff and the potential damage it may create, increases groundwater recharge thus enhancing the groundwater supply to streams and wetlands and the yield of water supply wells, aids in the removal of pollutants from the air and assists in the generation of oxygen, provides a buffer and screen against noise and pollution, provides protection against severe weather, aids in the control of drainage and restoration of denuded soil subsequent to construction or grading, provides a haven for birds and other wildlife and otherwise enhances the environment, protects and increases property values, conserves and enhances the Township's physical and aesthetic appearance, and generally protects the public health and safety as well as the general welfare.

b. Numerous governmental, professional, educational and business sources have cited the importance of trees to our well-being: "One acre of forest absorbs six tons of carbon dioxide and puts out four tons of oxygen, enough to meet the annual needs of 18 people." (U.S. Department of Agriculture). In one study, 83% of realtors expressed the belief that mature trees have a "strong or moderate impact" on the salability of homes listed for under \$150,000 and on homes listed for over \$250,000 this perception increased to 98% (American Forests, Arbor National Mortgage). Healthy, mature trees are said to add an average of ten percent to a property's value (USDA Forest Service). "Landscaping, especially with trees, can increase property values as much as 20 percent." (Management Information Services/ICMA). "The net cooling effect of a young, healthy tree is equivalent to ten room-size air conditioners operating 20 hours a day." (U.S. Department of Agriculture). "If you plant a tree today on the west side of your home, in 5 years your energy bills should be 3% less. In 15 years the savings will be nearly 12%." (Dr. E. Greg McPherson, Center for Urban Forest Research). "Trees properly placed around buildings can reduce air conditioning needs by 30 percent and can save 20 - 50 percent in energy used for heating." (USDA Forest Service). "In laboratory research, visual exposure to settings with trees has produced significant recovery from stress within five minutes, as indicated by changes in blood pressure and muscle tension." (Dr. Roger S. Ulrich, Texas A&M University).

c. It is the purpose of this section to protect and foster the existence and health of trees growing within the Township's borders, to preserve the maximum possible number of trees in the development of a site or lot, to protect specimen trees, to encourage innovative design and grading to promote the protection of existing trees, and to prevent indiscriminate, uncontrolled and excessive removal and cutting of trees, as well as land use activities inconsistent with accepted arboricultural practices, which contribute to the destruction of or permanent injury to trees upon lots and tracts within the Township. The standards and procedures established by this chapter are intended to furnish criteria for the use of Township boards, committees, commissions and officers in evaluating applications for tree removal and for site plan, subdivision and other land development approvals. They are further intended to inform those with interests in real property in the Township of the requirements to be followed with respect to trees located in the Township. The purpose of this section is to protect trees, the environment, and owners of real property who would be affected adversely by the removal of trees from property belonging to another person. The issuance of permits is a procedure designed to effectuate these goals.

(Ord. No. 2357-12 § 25-27.2)

25-27.3 Definitions.

The following definitions shall apply to this chapter:

Conservation easement shall mean a legal covenant restricting the use of land or natural features of the land that is described in the property deed and shown on a filed plat.

DBH shall mean the measurement of the diameter of the trunk of a tree planted in the ground taken four and one-half (4.5) feet from ground level on the uphill side of the tree.

Development application shall mean an application filed with the Township Planning Board or Board of Adjustment pursuant to the Municipal Land Use Law and the Township land development ordinances for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-3.

Drip line shall mean a vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground beneath.

Endangered or threatened species shall mean any species of tree or animal which has been determined by the Federal Fish and Wildlife Service or the State of New Jersey to be endangered or threatened.

Improved lot shall mean a single parcel of land with a residential or commercial structure, that is occupied pursuant to and in compliance with all applicable laws and regulations.

Land Use Board shall mean the Planning Board or Zoning Board of Adjustment of the Township of West Orange.

Major tree shall mean a tree species with a mature height of at least fifty (50) feet, which shall be at least a two and one-half (2.5) inch caliper at the time of planting.

Minor tree shall mean an evergreen tree, ornamental tree or other small tree at least six (6) feet in height at the time of planting.

Nonviable tree shall mean a tree that the officer certifies is dead, dying, diseased or too damaged to survive.

Officer shall mean the person primarily responsible for enforcing this chapter and who is qualified to do so by having the status of a New Jersey Approved Forester, New Jersey Certified Tree Expert, or an International Society of Arboriculture Approved Arborist, employed by, or appointed by, the Township of West Orange to implement this chapter and to carry out other related responsibilities as the Township may provide, including, but not limited to, developing and recommending to the Council a Township Woodlands Retention and Protection Plan and a Township Tree Inventory and Planting Schedule.

Person shall mean the owner of a parcel of real estate or any other individual, group, company, firm, corporation, partnership, association, society or other legal entity.

Qualified tree expert shall mean a New Jersey Licensed Landscape Architect, New Jersey Approved Forester, New Jersey Certified Tree Expert, or International Society of Arboriculture Approved Arborist.

Replacement tree shall mean a tree of a species approved by the officer and of nursery grade, properly balled and burlapped, meeting the minimum measurements of a major or minor tree, respectively.

Species shall mean the common name of a tree.

Specimen tree shall mean a tree in good health of unusual or exceptional form, size, age or shape for its species as evidenced by its inclusion in New Jersey's Big Tree List, or data base, published and coordinated by the New Jersey Forest Service, or having a Champion Tree point total (girth in inches plus height in feet, plus one quarter of average crown spread in feet) within ten (10%) percent of the point total of a tree of the same species listed in New Jersey's Big Tree List, published in "New Jersey's Big Trees", by the New Jersey Forest Service.

Structure shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land.

Tree shall mean a self-supporting single-stem perennial woody plant having a diameter of at least four (4) inches measured at a point four and one-half (4.5) feet (or fifty-four (54) inches) from the ground at the base of the tree on its uphill side.

Tree canopy shall mean the top layer or crown of a mature tree.

(Ord. No. 2357-12 § 25-27.3)

25-27.4 Permit Required; Prohibitions and Exemptions.

- a. *Permit.* Any person desiring to cut down or remove a tree shall file an application for a tree removal permit issued pursuant to this chapter, and shall not commence the cutting down or removal of any tree without first having been issued a permit.
- b. *Prohibitions.* Notwithstanding paragraph a. above, no person shall be permitted to do any of the following:
 1. Cut down or remove any tree within wetlands, flood hazard areas, riparian zones, or other areas protected by State or Federal law or applicable EPA or NJDEP regulations;
 2. Cut down or remove any tree within a conservation easement;
 3. Engage in activities which could cause a tree to die, including but not limited to topping, grade cut or fill, soil compaction within the drip line, chemical contamination, excessive drainage alterations or mechanical damage.
 4. Cut down or remove any tree on a slope of fifteen (15%) percent or greater in grade or on a slope where vegetation is presently stabilizing soils where a tree removal permit is submitted in connection with a development application, or a parcel upon which a new development is contemplated.
- c. *Exemptions.* The following are exempt from the permit requirement of paragraph a. above:
 1. For purposes of administrative convenience, up to three (3) trees may be removed on an improved lot within any three hundred sixty-five (365) day period. For enforcement and record-keeping purposes, every person removing one or more trees pursuant to this exemption shall file a tree removal report with the officer on a form to be provided by him or her, to document the tree(s) removed and date of removal. The tree removal report shall be filed within five (5) days of removal of the tree(s).
 2. Cutting down or removal of a nonviable tree, or a tree that is an immediate hazard to structures or human life or property; and
 3. Activities lawfully conducted on public lands or rights-of-way by or on behalf of a local, County, State, Federal or other governmental agency or entity, or a utility company.

4. Tree removal in conjunction with a Woodland Management Plan(s) approved by the N.J. Forest Service.

5. Tree removal on a golf course which is greater than seventy-five (75) feet from a property boundary.

d. *Development Applications.* With regard to every development application that involves proposed tree removal, the applicant shall:

1. Schedule a meeting with the officer in connection with the development application for the purpose of evaluating the impact of this chapter on the plans for development;

2. Submit a qualified tree expert's report setting forth a tree removal and tree replacement plan when applicable.

(Ord. No. 2357-12 § 25-27.4)

25-27.5 Application Procedure.

a. Every application for a tree removal permit shall be made by submission of the following:

1. An original and two (2) copies of an application on forms provided by the Township containing the following information: the name and address of the applicant; the street address and tax lot and block of the property in question; and the number of trees proposed to be removed;

2. The submission of such additional information as the officer may require to assist him in the processing of the tree removal permit.

b. Upon request, the officer shall assist any person who desires to apply for a tree removal permit with completing the application required by this section.

c. Every development application shall include a tree removal plan which shall include a map drawn to scale showing the location of all trees to be removed and a qualified tree expert's report addressing factors and the standards set forth in subsection 25-27.7.

d. The applicant shall clearly mark, in a manner approved by the officer, the trunk of each tree proposed to be removed at a height of four and one-half (4 1/2) feet above the ground so that such tree or trees may be inspected more easily by the officer.

(Ord. No. 2357-12 § 25-27.5)

25-27.6 Fees.

a. Except as provided below, the basic, nonrefundable fee for processing a tree removal permit application for an improved lot which is not the subject of a development application shall be twenty-five (\$25.00) dollars, intended to cover such processing costs to the Township as a preapplication meeting, review and evaluation of the application, requisite site inspections, and communications with the applicant including those relating to issuance or denial of a tree removal permit.

1. Fees shall be waived for nonviable trees, as certified by the officer.

b. In the case of an application for a tree removal permit related to a development application, the nonrefundable fee shall be three hundred (\$300.00) dollars, intended to cover the same costs to the Township stated in paragraph a. of this section.

(Ord. No. 2357-12 § 25-27.6)

25-27.7 Procedures, Factors and Standards for Application Review and Approval.

a. *Site Inspection.* Within twenty (20) days after receipt of an application for a tree removal permit, the officer shall communicate with the applicant and arrange for a site inspection. Submission of the application shall be deemed consent for the officer to enter onto the property on which the tree(s) to be removed is located during normal and reasonable business hours, but reasonable efforts should be made for the applicant to be present to answer the officer's questions and also to provide an opportunity for the officer to provide advice about the condition, value and recommended care of all of the trees on the applicant's property to better meet the educational purpose of the chapter. The officer's inspection should confirm the location of the tree(s) sought to be removed, the reason(s) for the removal request, should note any risk factors for other trees on the property, and the likelihood of potential problems, such as increased soil erosion, water runoff, drainage problems, the presence of bedrock or steep slopes, and safety concerns on the subject property and on adjoining property, and make other appropriate officials aware of those potential problems and concerns. Any permit not acted upon within a period of twelve (12) months after issuance shall become null and void.

b. *Factors to be Considered Where Tree Removal is Sought.* In deciding whether to issue a tree removal permit in connection with a development application, the Land Use Boards shall consider the following factors and in deciding all other applications, the officer shall consider the following factors:

1. Whether the proposed cutting down or removal would impair the growth and development of the remaining trees on the applicant's property or on adjacent properties;

2. Whether the proposed cutting down or removal would change existing drainage patterns;

3. Whether the proposed cutting down or removal would allow soil erosion or would increase dust;
4. Whether the proposed cutting down or removal would increase the amount of stormwater runoff on other properties in the area, whether contiguous or not;
5. Whether the proposed cutting down or removal would constitute a significant change in the screening between existing or proposed buildings or roads on the site and adjacent land or in the wooded aspect of the lot as viewed from any adjacent public road;
6. Whether the proposed cutting down or removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees;
7. Whether proposed changes in the topography of the area where such tree(s) are located will create conditions, which may be injurious to the trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement; and
8. Whether the proposed cutting or removal would remedy a safety hazard to persons or structures.

c. *Review Standards to be Applied Where Tree Removal is Sought.* A tree removal permit may only be granted subject to the following terms and conditions:

1. Applicant shall demonstrate that:
 - (a) To the greatest extent possible, existing vegetation shall be preserved;
 - (b) To the greatest extent possible, specimen trees and other large trees (ten (10) inch DBH and greater) shall be preserved;
 - (c) On all residential lots existing natural screening and woodlands between lots, along property lines and between buildings shall be preserved to the greatest extent possible;
 - (d) Suitable habitats shall be preserved for species of animals (including migratory animals) that are designated as endangered or threatened by Federal or State governmental authorities to the greatest extent possible;
2. The appropriate Land Use Board must make an express finding that the tree removal proposed by the applicant will not result in or cause, increase or aggravate any or all of the following conditions:
 - (a) Impaired growth or development of remaining trees or shrubs on the property of the applicant or upon adjacent property;
 - (b) Soil erosion, sedimentation and dust;

- (c) Stormwater or drainage problems;
- (d) Significant diminution of the screening between existing or proposed buildings or roads on site and adjacent land or in the wooded aspect of the lot or site from any adjacent road;
- (e) Sewerage problems; or
- (f) Dangerous or hazardous conditions.

(Ord. No. 2357-12 § 25-27.7)

25-27.8 Approval of a Permit and Tree Replacement Requirement.

a. To approve a tree removal permit connected with a development application or a proposed new development project, the Land Use Board also must find the following:

1. At least thirty (30%) percent of the trees on each particular lot or development site shall be preserved;
2. All other applicable ordinances and Federal and State statutes and regulations have been complied with.

b. Any tree removal permit in connection with a development application or a proposed new development project shall specify that no trees may be removed until after installation by the applicant of stormwater runoff controls and Soil Erosion measures that are required by this ordinance, by Title 7, Chapter 8, Section 7:8-5.4 and by Title 2, Chapter 90, Subchapter 1 of the New Jersey Administrative Code, respectively.

c. If the application for tree removal is not the subject of a development application, the officer shall decide within sixty (60) days of the submission of a completed tree removal permit application whether or not to grant the tree removal permit and shall promptly notify the applicant and any objectors. However, where the application is made in connection with a development application, the decision on the application for a tree removal permit shall be made by the Land Use Board and, if the application is granted, the permit shall be issued by the officer.

d. Immediately after a decision is rendered granting a tree removal permit, the applicant shall visit the site and clearly mark each tree that has been approved for removal. In the case of a new development, the applicant must give the officer notice of when the tree removal is proposed to take place at least two (2) weeks in advance. If the officer cannot be present on the day or days proposed for removal, he shall designate days for the removal when he can be present, which shall be binding on the applicant. The officer shall be present on the site to monitor all cutting and removal of trees, in order to ensure that only those trees which he authorized to be cut down and removed are cut down and removed and that all trees which he required to be preserved are preserved.

e. No tree cutting or removal may take place in connection with a new development unless the Township Engineer has inspected the site and certified that all soil erosion and sediment controls and stormwater runoff controls required by this chapter and applicable State law have been installed and completed. Copies of the certification shall be delivered to both the applicant and the officer by the Township Engineer immediately after it is made.

f. Permits granted under this section shall run with the land and shall remain in force and effect for twelve (12) months from the date of issuance.

g. Tree replacement, as approved by the officer, Land Use Board, or Township Engineer, shall be required on the removal site as follows:

1. (a) To the greatest extent possible, for each tree removed pursuant to the standards of this section of a DBH of four (4) inches to no more than six (6) inches, the applicant shall plant a major or minor tree as defined in this chapter on the removal property; and

(b) To the greatest extent possible, for each tree removed pursuant to the standards of this section of a DBH of more than six (6) inches, the applicant shall plant a major tree as defined in this section on the removal property.

2. In the case of a permit in connection with an improved lot, no tree replacement shall be required.

3. Tree replacement required by this chapter shall be completed within two (2) years of tree removal unless the officer grants an extension until the next appropriate planting season if necessary.

4. In no instance is tree replacement to be considered a penalty, but rather it implements the purposes of this section. Tree replacement shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this section.

(Ord. No. 2357-12 § 25-27.8)

25-27.9 Protection of Existing Trees.

a. In connection with any construction, prior to the issuance of a building permit or start of construction, snow fencing or other protective barriers acceptable to the official charged with the administration and enforcement of this section shall be placed around trees that are not to be removed. The protective barriers shall be placed beyond the drip line, but in no event less than ten (10) feet from the trunk, of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

b. No person shall:

1. Cut down or remove any tree, except as permitted by this chapter, or allow or cause such cutting or removal;

2. Cause or allow any willful damage, injury or disfigurement of any tree growing within the Township. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any tree; the pouring of any liquid or other material on any tree; or on the nearby ground; the construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within the drip line, but in no event less than ten (10) feet from the trunk, of any tree; or

3. Store or pile building material or debris or place construction equipment within the drip line, but in no event less than ten (10) feet from the trunk, of any tree.

c. If any tree to be saved in connection with construction as set forth above or any replacement tree planted pursuant to this section shall die within two (2) years it shall be replaced by the applicant or the property owner within six (6) months.

(Ord. No. 2357-12 § 25-27.9)

25-27.10 Administration and Enforcement.

In administering and enforcing this section, the officer, the Township's Construction Official, Zoning Officer, Township Planner, Engineer, Chief of Police, or any other Township officer or designee, is hereby empowered to issue stop work orders whenever a claimed violation of this section is witnessed or reported. (Ord. No. 2357-12 § 25-27.10)

25-27.11 Violations and Penalties.

a. Any person who violates any provision of this section shall, upon conviction thereof, be punishable by up to the maximum penalties prescribed by N.J.S.A. 40:49-5, establishing maximum penalties for violation of municipal ordinances generally, and as the same may be amended, the maximum penalties at the time of passage of this section being a fine not exceeding two thousand (\$2,000.00) dollars or imprisonment for a term not exceeding ninety (90) days, or a period of community service not exceeding ninety (90) days, or any or all of those penalties, and each tree removed or damaged in violation of this section shall be deemed a separate offense. However, if a person is convicted of removing a specimen tree without a permit, he shall be punished by a fine which shall be a minimum of one hundred (\$100.00)

dollars or the highest minimum fine then allowed by N.J.S.A. 40:49-5, and up to the maximum fine then allowed, or by imprisonment for a term not exceeding ninety (90) days, or both.

b. In addition, any person who cuts or removes a tree in violation of this section shall be required to plant a replacement tree on the removal site pursuant to subsection 25-27.8 of this section. If the tree that was illegally removed was a major tree, he must replant a major tree. If the tree that was illegally removed was a minor tree, he must replant a minor tree.

c. The removal of a tree in violation of this section shall automatically suspend any existing tree removal permit(s) associated with a property and freeze the issuance of any future permits until the matter has been resolved and any required tree replacement has been completed.

(Ord. No. 2357-12 § 25-27.11)

25-27.12 Severability.

If any part of this chapter is determined to be invalid, such part shall be severed and its invalidity shall not affect the remaining parts of this section. (Ord. No. 2357-12 § 25-27.12)

25-27.13 Repeal of Inconsistent Ordinances.

Any and all parts of ordinances which are inconsistent with any of the terms and provisions of this section be and the same are hereby repealed as to and to the extent of such inconsistency. (Ord. No. 2357-12 § 25-27.13)

25-27.14 Effective Date.

This section shall take effect upon final passage and publication as required by law. (Ord. No. 2357-12 § 25-27.14)