

**ORDINANCE NO. 2024-3446**

**TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTH**

**ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 423 OF  
THE CODE OF THE TOWNSHIP OF MIDDLETOWN GOVERNING  
STORMWATER REGULATIONS TO INCLUDE ARTICLE VI TREE  
REMOVAL AND REPLACEMENT REQUIREMENTS AS MANDATED  
BY THE NJDEP**

**WHEREAS**, as part of the MS4 Tier A Permit Stormwater Requirements, the New Jersey Department of Environmental Protection (the “**NJDEP**”) requires municipalities to adopt NJDEP mandated regulations for tree replacement and replacement throughout the Township of Middletown (the “**Township**”); and

**WHEREAS**, the Township is defined as a Tier A Municipality by the NJDEP, therefore, mandating the adoption of a tree removal and replacement ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Middletown, in the County of Monmouth, State of New Jersey that Chapter 432 of the Code of the Township of Middletown is hereby amended and supplemented, as follows:

**Section 1. Intent and Purpose**

- A. Trees and shrubs are a natural resource that provide aesthetic, economic, ecological, environmental and health benefits to the Township and its residents. The treatment of trees on individual properties can have significant impacts not only on those individual properties but also on neighboring properties, the streetscape, the tree canopy and the entire Township.
- B. The purpose of this ordinance is to control and regulate indiscriminate and excessive removal, injury and destruction of trees, in order to prevent conditions that may cause: reduced ecological and social benefits, including increased stormwater runoff; soil erosion; sedimentation of watercourses; reflected heat, air or noise pollution; diminished aquifer recharge; decreased soil fertility; increased risk to persons and property by failures of trees or their parts, and increased risk to real property and real property values from flash floods and other intense precipitation events.

**SECTION 2. Definitions**

Under this Article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word “shall” means the requirement is always mandatory and not merely directory.

- A. “Applicant” means any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.
- B. “Critical Root Radius (CRR)” means the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6” DBH would have a CRR = 6”x1.5’ = 9’.
- C. “Diameter at Breast Height (DBH)” means the diameter of the trunk of a tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.
- D. “Hazard Tree” means a tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.
  - 1. Has an infectious disease or insect infestation;
  - 2. Is dead or dying;
  - 3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
  - 4. Is causing obvious damage to structures (such as building foundations, public recreational facilities, sidewalks, etc.);

5. Is determined to be a threat to public health, safety, and/or welfare by a Licensed Landscape Architect, Certified Arborist or Licensed Tree Expert (LTE); or
  6. Tree to be removed is an *Ailanthus altissima* (Tree of Heaven).
- E. “Person” means any individual, resident, corporation, utility, company, partnership, firm, or association.
  - F. “Planting strip” means the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.
  - G. Replacement Tree means a tree that must be planted or replanted if a person removes a tree in accordance with this chapter.
  - H. “Resident” means an individual who owns/resides on the residential property or contractor hired by the individual who owns/resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed. Resident also includes owners/tenants of non-residential properties.
  - I. “Specimen Tree” means any tree that is recognized by the Township or part of a Tree Preservation Plan as being significant due to its size, unique value, age, rarity or the aesthetic, botanical, ecological and historic value. The Township has the right to deny removal of trees of such significance. Additionally, it shall mean any tree with a DBH exceeding 60% of that of the largest similar tree listed in either the “Monmouth County’s Largest Trees”, prepared by the Monmouth County Shade Tree Commission or “New Jersey’s Big Trees”, prepared by the Division of Parks and Forestry of the NJ Department of Environmental Protection. May also include trees determined to be historic, Legacy and/or Landmark trees.
  - J. “Street Tree” means a tree planted/located in the sidewalk, planting strip, and/or in the public right-of-way adjacent to the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian

refuges. Street tree(s) also include those trees that were or are required to be planted/located along frontage and on private property per an approved Resolution, Plan or Condition of Approval with the Planning Board and/or Zoning Board of Adjustment or other municipal authority, Grading Permit, Street Excavation Permit and/or Construction Permit. Removal of these street trees from private property requires an application be submitted and approved for Tree Removal and are subject to the tree replacement requirements.

- K. “Shade Tree” means a tree planted/located in areas not defined as a Street Tree, herein.
- L. “Tree” means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.
- M. “Tree Caliper” means the diameter of the trunk of a young tree, measured 6 inches from the soil line. For young trees whose caliper exceeds 4 inches, the measurement is taken 12 inches above the soil line.
- N. “Tree, Evergreen” means a tree that persists and retains its leaves throughout the year, including winter, and usually remains “green” throughout the year. Not all evergreens are considered conifer trees, i.e. southern magnolia (*Magnolia grandiflora*). Any evergreen tree that is not considered a conifer tree, such as a southern magnolia, shall be defined as a shade tree and/or street tree for replacement requirements. Evergreen trees include arborvitae, boxwood, cedar, fir, holly, juniper, leyland cypress, pine and spruce.
- O. “Tree, Conifer” means a cone-bearing tree (bears seeds in cones) and having needle-like or scale-like leaves that do not fall off in the winter and are typically evergreen in nature. Most conifers would be considered evergreen trees.
- P. “Tree Removal” means to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and

maintenance of a tree, or the application of treatments intended to manage invasive species.

### **SECTION 3. Permit Required**

No person, including the property owner, shall remove or destroy or cause to be removed or destroyed by any person, any tree on land within the Township unless a permit is obtained for such removal or unless there is an approved exemption for the tree/property under this ordinance. The Township may revoke a permit when there has been false or misleading application submittals or for non-compliance with an approved replacement plan.

- A. In all zoning districts of the Township any of the following types of tree removal shall require a permit, unless person/applicant obtained an approved exemption under Section V of this ordinance.
  - 1. Removing or otherwise destroying a deciduous street tree with a DBH of 2.5 inches or greater.
  - 2. Removing or otherwise destroying a shade tree with a DBH of 24 inches or greater.
  - 3. Removing or otherwise destroying an evergreen tree having a height of 10 feet or greater.
  - 4. Removing or otherwise destroying any specimen tree.
  - 5. Removing or otherwise destroying any tree that was planted or preserved as part of any landscape plan or in accordance with any street tree and shade tree requirements approved in conjunction with a subdivision, site plan or variance plan by respective municipal Board.
  - 6. All applications to the Planning Board or Zoning Board of Adjustment for approval of a major subdivision, minor subdivision, any site plan, or variance requiring tree removal, unless otherwise exempt pursuant to Section 5, shall submit a Tree Management Plan as required by Section 1, Section 8. Where tree removal is proposed for purposes not related to major subdivision, minor subdivision, site plan, or variance approval, an application for a tree removal permit shall be submitted to the Zoning

Officer, who shall request written guidance from the Department of Planning and Community Development and the Department of Public Works & Engineering in evaluating the permit application. A tree removal permit shall be considered a required prior approval “step” before a construction permit may be released.

#### **SECTION 4. Environmentally Sensitive Areas**

- A. Removing or otherwise destroying any tree located within wetlands, conservation easements, riparian zones, stream corridors, wetlands buffers/transition areas, sand dunes, beaches and other environmentally sensitive areas is prohibited. Trees of any size located in these areas are subject to NJDEP Regulations and Township Ordinance requirements. It shall be noted that Tree and plant removals and related vegetation destruction in these sensitive areas is prohibited without due cause. NJDEP statutes include, but are not limited to, the N.J.A.C. 7:7 Coastal Zone Management Rules, the N.J.A.C. 7:7A Freshwater Wetlands Protection Act Rules and the N.J.A.C. Flood Hazard Area Control Act Rules.

#### **SECTION V. Exemptions**

- A. All persons shall comply with the tree replacement standards, except in the cases detailed below that may result in an exemption. All persons engaging in the potential exempted activities below must notify the Township in writing and include proper justification for the exemption. Proper justification includes, but is not limited to, photographic evidence, certification from a licensed tree expert or certified tree arborist, and/or state agency documentation:
  - 1. Hazard trees may be removed with no fee or replacement requirement with proper written justification to determine tree is a hazard tree.
  - 2. Any tree located on an individual tract or parcel of land to be cut for personal use as firewood by the owner of such property. Not more than three trees shall be cut in any one year.
  - 3. Commercial nurseries, garden centers, fruit orchards, and tree farms in active operation.

4. Trees that are deemed to be removed by the Township Engineer or Department of Public Works and Engineering that are on or are impeding a public right-of-way.
5. Trees on Public parklands owned by the Township in consultation with the Township Engineer.
6. Trees that have been determined by a licensed tree expert or a certified arborist to constitute a threat to the health, safety or welfare of the general public, or to any existing structure.
7. Tree trimmed or removed for the clearance of power line rights-of-way by companies regulated by the New Jersey Board of Public Utilities.
8. Properties devoted to forest management and the active practice of silviculture for which farmland assessment has been approved and on file with the Township.
9. Pruning or maintenance of trees in a manner which is not harmful to the health of the tree.
10. Trees removed in the course of an emergency declared by the federal, state, or Township government.
11. The removal of any trees that are part of an approved woodland management program pursuant to the provisions of the New Jersey Farmland Assessment Act of 1964, provided such plan and documentation is filed with the Tax Assessor.
12. Trees removed during the replacement or repair of a residential individual subsurface sewage disposal systems and/or the replacement or repair of a domestic water supply.
13. Trees removed pursuant to a NJDEP or US environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan.

14. Approved game management practices, as recommended by the NJDEP Division of Fish, Game and Wildlife.
15. Any property that is 10,000 square feet or less in size and is developed with an existing residential use shall be exempt from the shade tree replacement requirements of this chapter, **but still must submit** a tree removal permit application for trees defined as street trees and for review and verification of environmentally sensitive areas, and/or other restrictive covenants on and/or adjacent to the property that may affect tree removal evaluation. Note that property is still subject to replacement requirements for tree(s) removed.
16. Any tree removed from an area of the property to be dedicated as a public improvement such as for construction of a public right of way shall be exempt from the replacement provisions of this chapter, except that where private roadways, parking areas or open spaces are proposed, all trees are subject to replacement in accordance with this chapter.

**SECTION 6. Tree Removal on Existing Individual Lots (Excluding Board Approved Subdivisions, Site Plan and Variances)**

- A. Any existing individual lot that does not meet the requirements of Section 5, Exemptions, and is not subject to the requirements of Board approval for a subdivision, site plan, or variance involving tree removal, shall submit application for a tree removal permit. This includes trees required to be removed that are subject to a construction permit as issued by the Construction Official for construction of new residences, additions to residences or the construction of swimming pools, sports courts or other accessory buildings or structures. A Plan and application for tree removal shall be submitted for review and approval prior to start of work. Such trees shall be clearly shown on the construction plans and land survey and identified by size, common name, genus/species. Additional submittal information required is as follows:
  1. **Application Form.** The application form shall be available from the Zoning Office and shall include the following information to be provided by the applicant:

- a. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation of this or any other state, etc.);
- b. Status of the applicant with respect to land (owner, lessee, tenant, purchaser, under contract, etc.);
- c. Name and address of the applicant for the permit if other than the owner;
- d. Description of the premises where removal is to take place, including lot and block numbers and street address, if assigned;
- e. A list of all street trees to be removed with a DBH equal to or greater than 2 inches (or circumference of 6.5 inches), shade trees to be removed with a DBH equal to or greater than 24 inches (or circumference of 75 inches) and evergreen trees to be removed that are 10 feet or more in height, identified by size and species. Total number of each species to be removed shall be included.
- f. Purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, dead, etc.);
- g. Such other information as may be deemed necessary in order to effectively process and decide such application; and
- h. License number of proposed contractor when applicable.

## **2. Sketch Data.**

- a. **Base information.** If possible a sketch shall be provided showing the location of the tree(s) to be removed in proximity to existing and/or proposed structures and property lines. Such sketch shall be of a scale and clarity to be suitable for review by the Township for the

purposes of this Article. Photographs (in color) shall also be provided to supplement in conveying the proposed work. Additionally each tree(s) proposed to be removed shall be marked or tagged with a ribbon for visual inspection. No paint nor permanent markings shall be applied to tree to designate tree(s) to be removed.

b. **Tree removal criteria.** The Zoning Officer may grant a tree removal permit based upon one or more of the following circumstances:

- i. Where the trees to be removed are limited to those trees necessary to permit the construction of buildings, structures, decks, driveways, individual subsurface sewage disposal systems, lawn area for recreational use by the inhabitants of the dwelling, and any other authorized improvements.
- ii. Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
- iii. Where the location of an existing tree negatively impacts on an existing individual subsurface sewage disposal system.
- iv. Where the condition, location, angle or growth of any existing tree makes it a hazard to structures or human life.
- v. Where it is the best collective professional judgment and opinion of the Township no such alternatives exist and refusal of permit shall preclude the property owner from the personal or professional use of the property.

3. **Tree replacement.** Tree replacement shall be provided in accordance with this Section. The application shall be accompanied by a narrative and

sketch or printed plan showing a tree replacement plan, to include and comply with the following:

- a. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section 5, shall be subject to the requirements of the Tree Replacement Requirements **Table A** below.
- b. Any person who removes one or more shade tree(s) with a DBH of 24" or more, unless exempt under Section V, shall be subject to the requirements of the Tree Replacement Requirements **Table B** below.
- c. Any person who removes one or more evergreen tree(s) with a height of 10 feet or more, unless exempt under Section 5, shall be subject to the requirements of the Tree Replacement Requirements **Table C** below.
- d. Acceptable trees to be selected as the Replacement Tree(s) shall be one or more of the trees listed in "Suggested Trees for Monmouth County" prepared by the Division of Shade Tree of the Monmouth County Department of Public Works and Engineering, latest edition. Trees chosen from this publication shall be selected to meet the intended environ/context of the planting area. Trees native to New Jersey are preferred. Other trees may be substituted upon review and approval by the Township. Trees shall be living trees and planted in accordance with Township ordinance , ANSI Standards and Best Management Practices for tree planting.
- e. The Tree Replacement Plan shall provide for replacing the removed and destroyed tree(s) in the same or contiguous location(s) on the premises, and in accordance with the following requirements. The Tree Replacement Plan shall require that the applicant replace each removed or destroyed tree with one or more trees depending on the DBH of the removed or destroyed tree and in accordance with the Tree

Replacement Schedule shown below for the specific defined tree (Street Tree, Shade Tree, Evergreen Tree).

**Tree Replacement Requirements Table A:**

Category Street Trees*	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Tree Replacement Fee (per tree)
ST-1	DBH of 2.5" To 23.99"	Replant 1 tree with a minimum tree caliper of 3" for each tree removed	<b>\$900</b>
ST-2	DBH of 24" or greater *	Replant 1 trees with minimum tree caliper of 3" for each tree removed	<b>\$3600</b>

**\* May be subject to Specimen Tree criteria and review.**

**Tree Replacement Requirements Table B:**

Category Shade Trees*	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Tree Replacement Fee (per Tree)
SH-1	DBH of 24" to 32.99"	Replant 3 trees with minimum tree caliper of 3" for each tree removed	<b>\$2700</b>
SH-2	DBH of 33" or greater *	Replant 4 trees with minimum tree calipers of 2.5" for each tree removed	<b>\$3600</b>

**\* May be subject to Specimen Tree criteria and review.**

**Tree Replacement Requirements Table C:**

Category Evergreen Trees*	Tree Removed	Tree Replacement Criteria (See Appendix A)	Tree Replacement Fee (per Tree)
C-1	Evergreen Tree having height of ten feet or more	Replant 1 Evergreen Tree with minimum 6' in height for each tree removed	<b>\$750</b>

**\* May be subject to Specimen Tree criteria and review.**

f. Replacement tree(s) shall:

- i. Be planted within 6 months of the date of removal of the original tree(s) or at an alternative date specified by the municipality, but no more than 12 months.

- ii. Be monitored by the applicant for a period of 2 years to ensure their survival and shall be replaced as needed within 12 months of planting.
  - iii. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
  - iv. Deciduous trees shall be replaced with deciduous trees and evergreen trees shall be replaced with evergreen trees, or as recommended by the Township.
  - v. Be nursery certified to size, genus and species and conform to the American Standard for Nursery Stock, latest edition (ANSI Z60.1) and Township Standards.
  - vi. Be planted in accordance with the Township ordinance. Additional Instructions for planting a tree can be found on the Arbor Day Foundation website at: [arborday.org/trees/planting/](http://arborday.org/trees/planting/).
  - vii. The planting of all replacement trees must be protected from wildlife, where necessary.
- g. Replacement Alternatives. If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:
- i. Plant replacement trees in a separate area(s) approved by the Township.
  - ii. Request permission to pay a fee to the Township per each tree removed according to respective Tables herein under heading Tree Replacement Fee. This fee shall be placed into a Tree Replacement Trust Fund dedicated to tree planting and continued maintenance of Township trees.

- iii. If replacement trees are unable to be planted upon the completion of work being performed, the owner or their designee may post a bond as recommended by the Department of Public Works & Engineering; not to exceed \$6,000 to be issued for a Temporary Certificate of Occupancy, Certificate of Occupancy or Certificate of Approval from the Construction Official for related construction permits. For major subdivisions, Developments, Site Plans and those applications in which tree removal permits were approved in relation to Board applications, the Planning Board and or Zoning Board of Adjustment shall consult with the Township Engineer to determine an appropriate dollar amount to be bonded prior to the approval from the Township Engineer.

**SECTION 12. Tree Removals/Replacements on properties requiring Board approval (i.e., subdivisions, site plans and variance plans)**

**A. Tree Management Plan application and permit for development requiring subdivision, site plan or variance approval.**

- 1. For the removal of trees in conjunction with an application for development of property as either a minor or major subdivision or site plan, or in any other form of development where the approval of the Planning Board and/or Zoning Board of Adjustment will be required, the applicant shall submit a Tree Management Plan to the Board as part of the proposed construction drawings and simultaneously with the application for approval of such development in a form and manner which complies with the Township Land Use Ordinance. A Tree Management Plan for Minor and Major Subdivisions and Site Plans, consisting of a map having a scale of one inch equals 50 feet or less, showing the location of existing wooded areas and clearly marked boundaries of the plots used to determine the average wooded acre for the site. This plan must be prepared by the applicant's professional. The locations of the trees shall be

certified by a professional land surveyor licensed in the State of New Jersey and authorized pursuant to N.J.S.A. to submit such plans.

2. The Approving Board shall also forward the proposed Tree Management Plan to the Township Engineer for review and comment. If the plan meets all requirements, the Township Engineer shall approve the plan and so advise the Board. If the plan does not meet the approval of the Township Engineer, a report will be generated outlining the plan's deficiencies and this report shall be submitted to the appropriate board and the applicant. The Tree Management Plan shall provide the following information:
  - a. Topographic Survey Plan showing existing and proposed conditions and environmentally sensitive areas.
  - b. Location of streams and watercourses.
  - c. Locations of slopes greater than 10% where any tree removal is proposed.
  - d. Total acreage of the tract.
  - e. Locations on the tract where tree removal is to take place.
  - f. For each plot inventoried to determine the average wooded acre, the application shall provide a list identifying the species of tree, the number of each species and the size of each individual tree in that plot.
  - g. The total number by species of existing trees with a DBH of 6 inches or greater on that tract.
  - h. The total number by species of trees with a DBH of 6 inches or greater which are to be removed.

- i. For tracts greater than one acre, the applicant may make an estimate of the total quantity of trees by species based upon the inventory of 0.1 acre plots. The location of each 0.1 acre plot used to determine the average wooded acre shall be provided on the Plan. For tracts where less than one acre is proposed to be cleared, the number and species of trees to be removed shall be based on actual count.
- j. All trees with a DBH of 16 inches or greater shall be specifically identified by location on the map and listed on a separate schedule showing species and common name and size. All efforts shall be made to preserve such trees, including, if necessary, relocation of infrastructure, roadways and buildings.
- k. A specific replacement plan for the planting of removed trees in accordance with this section shall be provided.
- l. The location of existing and proposed structures and improvements, if any.
- m. Number copies of said Tree Management Plan required to be submitted shall be determined by the respective approving board.

**B. Tree removal permit for tree management plans approved by land use boards.**

- 1. Tree removal permit is required for every management plan approved by the Planning Board or Zoning Board of Adjustment. The application must be presented to the administrative officer. A copy of the signed resolution of approval and a copy of the fully executed site plan or subdivision indicating all conditions of approval have been met shall be submitted to the administrative officer before a tree removal permit shall be issued.

2. The tree removal permit issued by the administrative officer shall be valid so long as the approving board's approval is valid. The removal or damage to trees not approved for removal shall be considered a violation of this article.
3. Any substantial change in a tree removal and replacement plan shall necessitate the submission of a revised plan to the approving board for review.
4. The tree removal permit issued by the administrative officer shall be displayed or be available for inspection at the site where tree removal and replacement is to take place. Failure to display or make available the tree removal permit at the site of removal shall be a violation of this article. Any person may examine the application for tree removal permit on file with the administrative officer upon request made in writing or in person to that office. Copies of the application submission shall be made available in accordance with law.
5. Prior to the issuance of a building permit, the developer shall comply with Conditions of Resolution of Approval, Grading Approval, Freehold Soil Conservation approval and obtain valid Tree Removal Permit.
6. Prior to the issuance of the certificate of occupancy, the Construction Code Official shall receive a release from the administrative officer or their designee that all trees to be retained and all trees to be replaced under the tree removal permit are in fact in existence and that all debris/slash generated as a result of these activities has been removed.

**C. Tree Replacement.** Tree replacement requirements for proposed Improvements and Developments requiring planning board, and /or zoning board approval that meet the lot area threshold of 10,001 square feet and greater are required to comply with the following formulas for tree replacement. This also applies to projects deemed to be Exempt Development and shall comply with the corresponding tree replacement requirements. For these

replacement requirements, the following formulas shall apply:

1. **For trees over six inch DBH and under eight-inch DBH.** For trees with a DBH equal to or greater than six inches and less than eight inches, replacement shall be based upon the percentage of the trees removed as set forth below:

Percentage of Trees Removed from Entire Development	Percentage of Trees to be Replaced with Trees of Minimum Size of 2.5 inch Caliper
80-100%	80%
60-79%	60%
40-59%	40%
20-39%	20%
10-19%	10%
9% or less	Equal to the amount of trees removed

2. **For trees over eight-inch DBH and under sixteen-inch DBH.** For trees with a DBH equal to or greater than 8 inches and less than 16 inches, replacement shall be two trees for each tree removed. The tree replacement size shall be a minimum size of 2.5 inch caliper
3. **For trees over 16 inch DBH.** For trees with a DBH equal to or greater than 16 inches, each removed tree shall be replaced with the size and the amount of trees set forth below per removed tree:

Existing Tree to be Removed (inches in DBH)	Number of Replacement Trees (minimum 2.5 inch caliper)
16 to 18 inches	4 trees
16.1 to 21	5
21.1 to 24	6
24.1 to 27	7

Existing Tree to be Removed (inches in DBH)	Number of Replacement Trees (minimum 2.5 inch caliper)
27.1 to 31	8
31.1 to 37	9
37.1 to 41	10
41 or greater	11

- D. Appropriate species.** The species or type of replacement tree and the mix of replacement tree types (deciduous, evergreen) shall be selected from the species removed from the tract under consideration or from the township's approved list of trees, including shade trees, ornamental trees and evergreens, as recommended by the approving board and its professionals. All trees shall be nursery certified to size, genus and species and conform to the American Standard for Nursery Stock, latest edition (ANSI Z60.1) and Township Standards. Instructions for planting a tree can be found on the Arbor Day Foundation website at: [arborday.org/trees/planting/](http://arborday.org/trees/planting/).
- E. Additional requirements for lots that are less than 10% wooded.** On parcels to be developed where less than 10% of the site is wooded, in addition to any trees that must be replaced or provided under this article, there shall be required the addition of one 2.5 inch (minimum) caliper tree for every 1,000 square feet of impervious coverage. Street trees required for along road right-of-way may not be credited toward this requirement.
- F. Credit for replacement trees.** Except where specifically prohibited, up to 5% of trees required by a landscaping plan may be credited toward the number of replacement trees at the discretion of the Township Engineer. No credit shall be granted for street trees required under this article.
- G. Waivers.**
- 1. On-site replacement trees.** All required replacement trees shall be planted on the site from which trees were removed, if possible. A waiver from any portion or all of the required on-site replacement may be granted by the approving board and shall be based upon documented practical physical difficulties and undue hardship related

to conditions of the site from which trees are to be removed. The comments and recommendations of the Board Engineer in consultation with the Township Engineer, Licensed Tree Expert, Certified Tree Arborist and/or Licensed Landscape Architect shall be solicited in determining whether the requested waiver should be granted.

2. **Off-site replacement trees.** In lieu of replanting trees on the removal site, applicants may have the option of planting replacement trees of type(s) selected by the Licensed Tree Expert from the approved list of trees contained in this article at an off-site location chosen by the Board in jurisdiction in consultation with the Licensed Tree Expert, Township Engineer, Certified Tree Arborist and/or Licensed Landscape Architect. Such off-site locations shall be restricted to Township-owned public property, including but not limited to public parks and public buildings.
3. **Tree Replacement Trust Fund.** In the alternative, should the quantity of the trees to be removed be greater than the tree replacement/landscaping plan due to limited available planting area, the applicant may, if approved, make contribution to be deposited in the Tree Replacement Trust Fund as established by this article. Contribution shall be based upon Tree Replacement Fee Schedule listed in Section 6 of this ordinance.

### **SECTION 13. Protection of trees and shrubs from utility wires**

Any individual, corporation or other entity having control over any wire for the transmission of electric current or telephone, cable or any other utility service along a public street, highway, property easement, or right-of-way shall at all times guard all trees and shrubs through which such wires pass against any injury from the wires or from the current carried by them. Prior to undertaking any work on the utility affecting any such tree or shrub, the utility company shall provide written notice to the Department of Public Works & Engineering or its agent and abutting property owner(s) of same. The utility company shall be responsible for the removal of all debris associated with work on the utility affecting any such tree.

### **SECTION 14. Tree Replacement Trust Fund:**

- A. There is hereby established a fund known and designated as the Tree Replacement Trust Fund.

- B. The primary purpose of the Tree Replacement Trust Fund is to provide for the planting and maintenance of trees on public property in the Township.
- C. The Fund will also pay administrative costs to implement the provision of this section, including but not limited to fees for processing of permits, site inspections, consultants, and supervisors of tree replacements. Administrative costs imposed in accordance with this section shall not exceed 30% of the fund, as determined on an annual basis.
- D. Appropriations from the Tree Replacement Trust Fund shall be authorized by the Township Committee in accordance with a municipal tree planting plan with consideration of the recommendations by the Department of Public Works & Engineering.
- E. The Tree Replacement Trust Fund shall be maintained by the Chief Financial Officer.

#### **SECTION 10. Inspections**

Prior to taking final action upon any applications for tree removal, an inspection of the site may be made by:

- A. The Zoning Officer, Township Engineer or a Township designee in those cases where final determination is to be made as to the granting or denial of an application.
- B. Such inspection may be made of the site referred to in the application, and of contiguous and adjoining lands, as well as lands in the vicinity of the application, for purpose of determining drainage conditions and physical conditions existing thereon.
- C. Field inspection of the lot may include determining if the removal, clearing and/or relocation of the trees will have a negative impact on the property, environment and/or neighboring lots. Inspection will include determining as much as possible that:
  - 1. The tree(s) to be removed is not located within a conservation area, environmentally sensitive area, wetland area or buffer area designated by state, county or Township ordinance.

2. The tree(s) to be removed is not located within a conservation area or buffer area as delineated and/or specified on a previously approved site plan or subdivision plan for the property in question.
3. The tree(s) to be removed were not required to be planted by a previously approved application and/or landscape plan to provide screening or buffering for a building or structure located on the property in question or on an adjacent parcel of land.
4. Would not cause an apparent increase of surface water runoff.
5. Does not create soil instability and erosion.
6. Does not create a negative impact on the adjacent properties.
7. Does not cause disturbance or removal of a specimen tree(s).

#### **SECTION 11.       Enforcement**

- A.     The Zoning Officer is designated as the enforcing agent for this article, or a designee. Upon review of as-built plans or site inspection of any major site development application, subdivision or soil movement activity, the Township Engineer shall inform the Zoning Officer of any trees removed in excess of those called for removal in the permit. The Zoning Officer has the power to revoke the permit if the applicant provided false or misleading information within the permit application and/or if there is noncompliance with the approved permit.
- B.     When a tree removal permit is issued as a prior approval to obtaining a construction permit, the Construction Official may not issue a certificate of approval or certificate of occupancy until all conditions set forth by the Zoning Officer and Tree Replacement requirements are met.

#### **SECTION 12.       Permit approval**

- A. No approval shall be granted by the Zoning Officer if the proposed tree removal is contrary to the best interests of the public health, safety and general welfare.
- B. Duration of permit. Permits granted for the removal of trees under the terms and conditions of this article shall run with the land and shall remain in force and effect for the following periods, and not thereafter.
  - 1. If granted for a lot or parcel of land which no construction permit is required: one year from the date of issuance.
  - 2. If granted for a lot or parcel of land for which a construction permit is required, but for which no subdivision or site plan approval is required by the Township's Planning Board until the expiration of the construction permit granted with such tree removal permit.

#### **SECTION 13. Notice of commencement of tree removal**

- A. The holder of a tree removal permit shall notify the Zoning Officer at least seven business days in advance of when tree removal activity will commence.
- B. The notice shall also include written statement as to the manner of disposal of the removed trees. Where appropriate, the Zoning Officer shall advise the Township's Public Works Department of the name of the permit holder, the location of the removal site, the date removal is to commence, and the manner of disposal to be employed. Debris from trees that are in a quarantine area, if any, due to a pest shall not be moved outside of the quarantine zone, in accordance with state regulations.

#### **SECTION 14. Violations and penalties; restitution**

Any individual, corporation or entity violating any provision of this article shall, upon conviction thereof, be punishable by a fine. The cutting, destruction or removal of each tree shall constitute separate offense. Such individual, corporation or entity in violation of this ordinance shall submit application and apply for the respective Tree Removal and Replacement Permit within 30 days.

#### **SECTION 15. Appeals**

- A. If a tree removal permit request is denied by the Zoning Officer, the applicant shall have a right to appeal the decision. The appeal shall be made to the Township's Zoning Board of Adjustment within 10 days of receipt of the notice of permit denial.
- B. Any individual, corporation or entity penalized under Section 14 shall have a right to appeal the decision. The appeal shall be made to the Township's Zoning Board of Adjustment within 10 days of receipt of the notice of violation.