

Introduction: August 6, 2024
Public Hearing: September 3, 2024

**TOWNSHIP OF CHESTER
ORDINANCE 2024-17**

**AN ORDINANCE TO AMEND CHAPTER 113, LAND USE, PART 3, SOIL REMOVAL
AND LAND DISTURBANCES, ARTICLE 19, DEVELOPMENT REQUIREMENTS,
SECTION 113-134, REMOVAL OF TREES**

WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) issued a final New Jersey Pollutant Discharge Elimination System (NJPDES) permit action in accordance with N.J.A.C. 7:14A on December 1, 2022 in response to the United States Environmental Protection Agency's (USEPA's) Phase II rules; and

WHEREAS, this permit action was related to NJPDES Permit Number: NJ0141852, Final: Stormwater Discharge Master General Permit Renewal which became effective on January 1, 2023 and shall expire on December 31, 2027; and

WHEREAS, in accordance with Chester Township's New Jersey Pollutant Discharge Elimination System (NJPDES) Municipal Separate Storm Sewer System (MS4) Permit, the Township is required to comply with the Stormwater Discharge Master General Permit Renewal; and

WHEREAS, Part IV.F.1.b.ii of the permit requires that all permittees adopt and enforce a community-wide ordinance to control tree removal and replacement to reduce stormwater runoff and pollutants and to promote infiltration of rainwater into the soil; and

WHEREAS, the Township Engineer has reviewed the Township's current Tree Removal Ordinance and has determined it must be revised to comply with the requirements of the NJPDES MS4 Permit; and

WHEREAS, the NJDEP has created a model Tree Removal-Replacement Ordinance which conforms to the requirements of the NJPDES MS4 Permit; and

WHEREAS, the Township Council seeks to adopt the model Tree Removal-Replacement Ordinance with minor modifications in order to satisfy the conditions of the NJPDES MS4 Permit.

NOW THEREFORE, BE IT ORDAINED by the Township Council of Chester Township, County of Morris, and State of New Jersey that Part 3, Article 19, Section 113-134 of the Land Use Code for Chester Township is hereby amended as follows:

SECTION ONE.

Article 19, Section 113-134 of the Land Use Code is hereby **deleted** and replaced as follows to meet the requirements of the NJPDES MS4 Permit.

§113-134 Tree removal-replacement

A. Purpose. This Section establishes requirements for tree removal and replacement in Chester Township to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

B. Definitions. For the purpose of this Section, 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.

- (1) “Applicant” means any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.
- (2) “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’.
- (3) “Diameter at Breast Height (DBH)” means the diameter of the trunk of a mature 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.
- (4) “Enforcement Officer” shall mean the Chester Township Zoning Officer or designee.
- (5) “Footprint” Shall mean the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.
- (6) "Garden center" shall mean a retail business of which the principal sales are garden and landscaping related products.
- (7) “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.
 - (a) Has an infectious disease or insect infestation as certified by a certified arborist or Licensed Tree Expert (LTE);

- (b) Is dead or dying as certified by a certified arborist or Licensed Tree Expert (LTE);
 - (c) Obstructs the view of traffic signs or the free passage of pedestrians or vehicles as confirmed by the Township Engineer, where pruning attempts have not been effective;
 - (d) Is causing obvious damage to structures (such as building foundations, sidewalks, etc.) as confirmed by the Township Engineer; or
 - (e) Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).
- (8) "Nursery" shall mean a tree farm and/or wholesale grower of deciduous and/or evergreen trees.
- (9) "Person" shall mean an individual, partnership, corporation, firm, association or any other entity recognized by law.
- (10) "Remove" shall mean to destroy, cut, chop, displace and shall also mean to perform any act of tree pruning or thinning, equipment operation, soil compaction or materials storage, soil removal or paving that results in tree destruction.
- (11) "Replacement tree" shall mean a nursery-grown certified tree, at least three inches caliper, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock and installation thereof, set forth by the most recent publications of the American Association of Nurserymen.
- (12) "Tree" shall mean any living deciduous tree having a trunk of a diameter greater than four (4) inches, measured at a point four and one-half (4½) feet above the ground, or any living coniferous tree having a trunk of a diameter greater than four (4) inches, measured at a point four and one-half (4½) feet above the ground, or a height greater than six (6) feet. Nothing in this chapter is intended to conflict with or supersede the provisions of the Soil Erosion and Sediment Control Act of the State of New Jersey, Chapter 251 of the Public Laws of New Jersey. See N.J.S.A. 4:24-39 et seq.
- (13) "Tree caliper" shall mean the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

C. Prohibited activities.

No person shall cut or remove any tree upon any lands within the township, unless such action accomplishes a useful purpose and is done in accordance with the regulations and provisions of this chapter.

D. Exemptions.

All persons shall comply with tree replacement standard outlined in Section 113-134J except in the cases detailed below. Nothing in this section shall permit the removal of trees subject to other regulations.

- (1) Tree farms in active operation, nurseries, fruit orchards, and garden centers. Proper justification for this exemption shall include the submission of proof that such a business or practice is in legal operation at the site.
- (2) Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the Township. Proper justification for this exemption shall include the submission of a copy of the approved forest stewardship or woodland management plan.
- (3) Any tree growing in a public right-of-way, private right-of-way or utility easement, as designated on the Chester Township Tax Map or Deed of Record.
- (4) Any tree located on a tract or parcel of land up to five (5) acres, to be cut for personal use as firewood by the owner of such property. Not more than five (5) trees per lot shall be cut in any one (1) year. More than five (5) acres are permitted up to nine (9) trees per lot shall be cut in any one (1) year. Proper justification for this exemption shall include the Township's verification of the number of trees removed within the past year as per the Township's permit system.
- (5) Hazard trees may be removed with no fee or replacement required. Proper justification for this exemption shall include the appropriate certification or confirmations of the hazard tree(s) as outlined in §113-134B(7).
- (6) The removal or clearing is on property subject to an approved woodland management program pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., or on property actively operated as a farm under the state's Right to Farm Act, which is removed to create fields for crops or pasture, or to construct a farm building.
- (7) Any tree located on or within twenty (20) feet of a proposed residential structure, its well, septic system, driveway access or other accessory structures.

- (8) Any tree required to be cut or removed in order to install or maintain utilities (such as electricity, telephone, water or sewer lines).
- (9) Any tree removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan. Proper justification for this exemption shall include the submission of the municipal or state decommissioning plan which demonstrate the approved tree removal(s).
- (10) Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan. Proper justification for this exemption shall include the submission of the approved environmental clean-up permit and/or plans which demonstrate the approved tree removal(s).
- (11) Approved game management practices, as recommended by the State of New Jersey DEP, Division of Fish, Game and Wildlife. Proper justification for this exemption shall include the recommendations of the State of New Jersey DEP, Division of Fish, Game and Wildlife specific to tree removal(s).

E. Permit required.

A. Application. Any person desiring to destroy, cut or remove any such tree which is not excepted under terms of Section 113-134D shall apply to the township enforcement officer for a permit to remove such tree.

- (1) Any tree to be removed in accordance with a subdivision or site plan finally approved by the township Planning Board or Zoning Board of Adjustment shall not be required to apply for a separate tree removal permit, however all other requirements of this Section 113-134 shall apply to such applications and be enforced as part of the subdivision or site plan review process, as applicable.

B. Information.

- (1) The applicant shall identify by block and lot the land upon which the tree is located and shall disclose the name and address of the owner, tenant or duly authorized agent of such owner or tenant, and the applicant shall also identify the species and generally designate the location of the tree sought to be cut, removed or destroyed.
- (2) A tree removal permit, if required, shall be obtained prior to the approval of all minor and major subdivisions, site plans, building applications and certificates of occupancy on a map which shall include the following:
 - (a) Area of tract or parcel of land.
 - (b) General location of wooded areas and trees to be removed.
 - (c) Exact location of rare or historic trees as required by the township enforcement officer.

(d) General topographic conditions of site as derived from USGS Map of the Chester Township area.

C. Fees. All applications shall be accompanied by the proper fee as set forth in Section 113-134F. No application shall be deemed complete until all fees are paid in full.

F. Permit application fee.

Upon application for a permit, the applicant shall pay to the township the following fees:

- (1) For any application consisting of five (5) acres or less: Twenty-five dollars (\$25.00).
- (2) For each additional acre: Five dollars (\$5.00).
- (3) There is no maximum permit fee.

G. Time period to Approve or Deny Application.

The enforcement officer shall act upon a complete application for tree removal or clearing within ten (10) business days, unless the applicant has consented to an extension of such time period. An application for tree removal permit shall not be considered complete for review until such time as an appropriate zoning permit approval, if required, has been issued for all other development activities proposed on the subject property.

Failure of the enforcement officer to act within this time period shall not constitute an automatic approval; however, the applicant may contact the Township Administrator who shall act, or cause the enforcement officer, on the application within five (5) business days. Failure to act within this time period shall be deemed an automatic approval.

H. Duration of Tree Removal Permits.

Tree removal permits granted under the terms and conditions of the chapter shall run with the land, and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- (1) If granted for a lot or parcel of land for which no building permit is required - one year from the date of issuance.
- (2) If granted for a lot or parcel of land for which a building permit is required, but for which no development approval is required by the Planning Board or Zoning Board of Adjustment until expiration of the building permit granted with such tree removal permit.
- (3) Except as provided in Subsections (4) below, if granted for a lot or parcel of land for which a development approval from the Planning Board or Zoning Board of Adjustment is required as a condition precedent to obtaining a building permit - until expiration of the site plan approval, or expiration of the building permit issued after such development approval, whichever is later.

- (4) If granted for a lot or parcel of land for which minor subdivision is sought — one year from the date of granting such minor subdivision.

I. Criteria for determination of permitted tree removal.

As a basis for determining permitted tree removal, the duly appointed officer shall give due consideration to the following:

- (1) For purposes other than commercial lumbering. The lands covered by each application shall be inspected by the township enforcement officer who shall issue a permit upon a finding that the destruction or removal to be permitted would not impair the growth and development of the remaining trees on the applicant's property or adjacent properties, would not cause soil erosion, would not impair existing drainage patterns, would not lessen property values in the neighborhood and would not impair substantially the aesthetic values of the area. The township enforcement officer shall have the authority to affix reasonable conditions to the approval of a permit required by this chapter.
- (2) For the purposes of commercial lumbering in accordance with the following restrictions:
 - a. The lumbering company or individual owner of the property in question shall file with the duly appointed officer a forest management plan approved by the New Jersey Department of Environmental Protection, Bureau of Forestry, or other professional forester. Such plan shall be subject to the approval of or disapproval of the township enforcement officer. Any deviation taken from this plan shall be considered a violation of this chapter.
 - b. In no case shall more than thirty percent (30%) of the total number of trees be removed from the entire tract.

J. Tree Replacement and Reforestation.

- (1) The replacement of trees shall occur as prescribed in the following table:

DBH of Existing Tree Removed	Number of Replacement Trees (3 inches caliper)
Between 10 inches and 18 inches	1
Between 18 inches and 24 inches	2
Between 24 inches and 30 inches	3
Between 30 inches and 36 inches	5
Between 36 inches or greater	7

- (2) Replacement trees shall be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality.
- (3) Replacement trees shall be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months.
- (4) Replacement trees shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
- (5) Replacement tree(s) shall be of nursery grade quality, balled and burlapped and planted on the site from which trees were removed. Relief from any portion or all of the on-site replacement requirements may be granted by the approving authority. Any relief shall be based upon practical physical difficulties and undue hardship related to conditions of the site from which the trees are to be removed. The approving authority shall solicit the comments and recommendations of the Township Engineer in determining whether the relief requested by the applicant should be granted.
- (6) Instead of replanting trees on the removal site, an applicant may request that the approving authority permit the applicant to contribute to the Township Tree Trust Fund as established by this chapter. The contribution, in lieu of planting trees, shall be \$200 per replacement tree which meet the standards set forth in this section. No more than 75% of tree replacement may be by way of contribution.
- (7) The planting of all replacement trees shall be done by or supervised by a certified arborist.

K. Establishment of Tree Trust Fund.

- (1) There is hereby established a reserve in the Township's general capital fund which shall be known and designated as the Tree Trust Fund. A separate bank account shall be opened and maintained for this purpose.
- (2) The primary purpose of the Tree Trust Fund is to provide for the planting and maintenance of trees and shrubs on public property.
- (3) The funds 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.
- (4) Appropriations from the Tree Trust Fund shall be authorized by the Township Committee in accordance with a municipal tree planting plan.
- (5) The Tree Trust Fund shall be maintained by the Chief Financial Officer.

L. Issuance of construction permit.

Whenever a construction permit is requested for a structure which will require the removal of trees as herein protected, the enforcement officer shall decline to issue local clearance for the construction official to issue any such construction permit until a tree removal permit, where required, is applied for and issued. The construction official shall not issue a construction permit or certificate of occupancy for any building on any site, parcel or tract for which there is an outstanding complaint pursuant to this chapter.

M. Appeal of enforcement officer's decision.

The applicant shall have the right to appeal the decision of the township enforcement officer to the township administrator within ten (10) days of receipt of such decision. The appeal shall be by written notice to appeal. The township administrator shall proceed to hear such appeal upon notice to the applicant within thirty (30) days after the filing of such notice of appeal. The township administrator may, in their discretion and upon complete review of the application, and after hearing the testimony of the township enforcement official and the applicant, reverse, modify or affirm the aforesaid decision.

N. Violations and penalties.

Each tree that is removed or cleared in violation of this section shall constitute a separate violation.

Any person convicted of a violation of any portion of this chapter shall be punishable by a fine not exceeding two thousand dollars (\$2,000.00), by imprisonment for a term not exceeding ninety (90) days, or by a period of community service not exceeding ninety (90) days, or by both such fine and imprisonment or community service.

ATTEST:

TOWNSHIP COUNCIL OF THE
TOWNSHIP OF CHESTER

Robin Collins

Robin Collins
Municipal Clerk/Administrator

Timothy Drag

Timothy Drag
Mayor