

**TOWN OF CLINTON
HUNTERDON COUNTY, NEW JERSEY
ORDINANCE # 24-05**

**ORDINANCE AMENDING CHAPTER 130 OF THE CODE OF THE TOWN OF
CLINTON, ENTITLED “TREES AND SHRUBS” TO ADD ARTICLE II, ENTITLED,
“REMOVAL AND PRESERVATION OF TREES ON PRIVATE PROPERTY”**

WHEREAS, in order to prevent pollutants from being transported to local water bodies from Municipal Separate Storm Sewer Systems (MS4s), federal stormwater regulations require MS4 operators to obtain a National Pollutant Discharge Elimination System (NPDES) permit and implement a stormwater management program; and

WHEREAS, trees play a critical, often overlooked, role in the water cycle and in the mitigation of stormwater runoff issues such as soil erosion, pollutant reduction, infiltration, quantity reduction, and thermal effects; and

WHEREAS, the 2024 Tier A MS4 permit renewal requires permittees (such as the Town) to, at a minimum, adopt and enforce a community-wide ordinance to control tree removal and replacement for all types of properties where the municipality has jurisdiction.

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Clinton, in the County of Hunterdon and State of New Jersey, as follows:

SECTION 1. Chapter 130 of the Code of the Town of Clinton (the “Code”), entitled “Trees and Shrubs” is hereby amended to add Article I, entitled “Removal of Trees and Shrubs within the public right-of-way or on public property” and place Sections 130-1 through 130-8 under such new Article.

SECTION 2. Chapter 130 of the Code of the Town of Clinton, entitled “Trees and Shrubs” is hereby amended to add Article II, entitled, “Removal and Preservation of Trees on Private Property,” as follows:

§130-9. Intent and Purpose.

A. Trees and shrubs are natural resources that provide aesthetic, economic, ecological, environmental, and health benefits to the Town of Clinton 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 Town.

B. The purpose of this article is to control and regulate indiscriminate and excessive removal, injury, and destruction of trees 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.

§130-10. Permit Required.

In all zoning districts of the Town, any of the following types of tree removal shall require a permit, unless exempt under §130-11.

In the following instances, a permit is required with a fee collected, and mitigation is required based on the Tree Replacement Table in §130-14:

- (1) Removing or otherwise destroying a tree with a DBH of six inches or more.
- (2) Removing or otherwise destroying a tree with a canopy extending over a public right-of-way.
- (3) Removing or otherwise destroying any tree within a stream corridor as defined in § 130-12.
- (4) Removing or otherwise destroying any tree that was planted or preserved as part of any landscape plan or in accordance with any tree requirements approved in conjunction with a subdivision or site plan shall be removed.

B. In the following instances, a permit is required with no fee collected, and no mitigation is required:

- (1) On properties zoned for single family or two-family residential use, removing up to two (2) trees with a DBH of six inches or more within a twenty-four (24) month period. [The number of trees removed is a rolling count across a twenty-four (24) month period. For example, if 2 trees are removed in July 2024, the 'count' resets to zero in July 2026. However, if 1 tree is removed in July 2024 and another in July of 2025 the first tree will come off the count in July 2026 and the second in July 2027.]
- (2) Removing or otherwise destroying a tree with a DBH of six inches or more that is dead, diseased, or dying as confirmed in writing by a certified arborist or licensed tree expert.
- (3) Removing or otherwise destroying a tree with a DBH of six inches or more that poses a threat to an existing structure.
- (4) Removing or otherwise destroying a tree with a DBH of six inches or more that is on the list of invasive species that is updated annually by the Shade Tree Commission.
- (5) Trees removed during the replacement or repair of a residential individual subsurface sewage disposal system and/or the replacement or repair of a domestic water supply.
- (6) Trees removed that are within 10 feet of an existing building.

§130-11. Permit Exemptions.

The following shall be exempt from the requirements of this section and do not require a permit:

- (1) Trees with a DBH of less than six inches.
- (2) Commercial nurseries, orchards, and farms.

- (3) Trees that are deemed to be removed by the Town Engineer or Department of Public Works that are on or are impeding a public right-of-way upon consultation with Shade Tree Commission.
- (4) Public rights-of-way or parklands owned by the Town of Clinton where trees are under the jurisdiction of the Shade Tree Commission (see § 4-19 Shade Tree Commission).
- (5) Trees that have been determined by the Shade Tree Commission or Town Arborist to constitute a threat to the health, safety or welfare of the general public, or to any existing structure.
- (6) Powerline rights-of-way by companies regulated by the New Jersey Board of Public Utilities.
- (7) Properties devoted to forest management and the practice of silviculture for which farmland assessment has been approved.
- (8) Pruning or maintenance of trees in a manner that is not harmful to the health of the tree.
- (9) Trees removed in the course of an emergency declared by the federal, state, or Town government.
- (10) 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 WD-1 form is filed with the Tax Assessor.

§130-12. Definitions.

For the purpose of this ordinance, 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. The use of the word "shall" means the requirement is always mandatory and not merely directory.

Applicant means any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.

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 $CRR = 6'' \times 1.5' = 9'$.

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.

Dripline means the area defined by the outermost circumference of a tree canopy where water drips from and onto the ground.

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, etc.)
5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

Licensed Tree Expert (LTE) means an arborist or other tree care professional that has been licensed by the New Jersey Board of Tree Experts.

Person means any individual, resident, corporation, utility, company, partnership, firm, or association.

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.

Resident means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

Stream Corridor means within 50 feet from the banks of the South Branch of the Raritan River, Beaver Brook, Spruce Run, or any waterway receiving C-1 designation by the NJ Department of Environmental Protection.

Street Tree means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) 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.

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.

Tree Caliper means 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.

Tree removal or **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 with the intent to kill or damage such tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

Tree Survey means an aerial photograph or survey at a minimum scale of one inch equals 200 feet or a drawing to scale, which provides the following information: location of all trees or

forested areas, the common name of all trees, the average diameter breast height, and indication of trees proposed to be removed, and the location of any proposed tree replacements.

§130-13. Tree Escrow Fund.

- A. There is hereby established a reserve in the Town's general capital fund which shall be known and designated as the Tree Escrow Fund. A separate bank account shall be opened and maintained for this purpose.
- B. The primary purpose of the Tree Escrow Fund is to provide for the planting and maintenance of trees and shrubs on public property and street trees in the right-of-way.
- C. The funds will also pay administrative costs to implement the provision of this section, including but not limited to fees for processing 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 Escrow Fund shall be authorized by the Town Council in accordance with a municipal tree planting plan based solely on the recommendations of the Shade Tree Commission.
- E. The Tree Escrow Fund shall be maintained by the Chief Financial Officer.
- F. If a tree removal permit is granted for tree removal necessary for adding a patio, sundeck, outdoor private swimming pool, tennis court, sports court, or other permitted accessory use on an already developed single-family residential lot, the cash contribution to the Tree Escrow Fund in lieu of planting on the property in respect of such removal shall not exceed \$2,000.
- G. The Tree Escrow Fund may also be used as a repository of funds received for memorial or commemorative tree planting administered by the Shade Tree Commission and approved by the Town Council.

§130-14. Regulated Activities.

A. Application Process.

Any person planning to remove a tree shall submit an application in writing to the Shade Tree Commission. The Shade Tree Commission (or a subcommittee designated by the Shade Tree Commission to review such applications) will consider the application and any mitigation required. No tree shall be removed until the Shade Tree Commission (or the designated subcommittee) has reviewed and approved the removal. The Shade Tree Commission shall notify the applicant and the Zoning Officer of the approval or denial of the request within five business days of the receipt of the application. A failure of the Shade Tree Commission (or the designated subcommittee) to approve or deny an application within such time period shall be deemed an approval of the application. The application shall include the following information:

1. Name, address, and telephone number of the owner of the premises and the party performing the removal;
2. Description of the premises where removal is to take place, including lot and block numbers, and street address if assigned;
3. A list of all trees to be removed with a DBH equal to or greater than six inches identified by size, genus, including total number of each species to be removed. All trees to be removed shall be clearly marked with at least one inch wide colored tape tied around the trunk;
4. Purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, trees that are diseased, dead or potentially hazardous, etc.);
5. A sketch of the property showing the location of each marked tree to be removed;

For removal of trees in conjunction with a Land Use application, the Zoning Officer shall submit the application to the Shade Tree Commission allowing at least 10 days notice prior to next scheduled Shade Tree Commission meeting to review application and inspect the site before making recommendations.

Applicants will be subject to an application fee as follows:

One (1) to Five (5) Trees	\$50.00
Six (6) trees or more	\$10.00 per tree

B. Development Applications before the Land Use Board. In the case of an application for development for major or minor site plan, major or minor subdivision, or a variance that may involve tree removal regulated by this ordinance, no separate application shall be filed and no separate fee shall be required in addition to the fees charged for the application for development. The application for development shall include the following information at a scale sufficient to enable the determination of matters required under these regulations:

1. The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any.
2. Locations of all forest types which are subject to this Article, identified by common or botanical name. (Trees proposed to remain, to be transplanted or to be removed shall be identified.)
3. A statement showing how trees not proposed for removal are to be protected during land clearing and construction, i.e., a protective barrier as defined herein.
4. Locations and dimensions of all setbacks and easements required by the Zoning Ordinances of the Town.
5. Statements as to grade changes proposed for the lot or parcel and how such changes will affect these regulations.
6. Any proposed tree replacement.
7. All trees to be retained shall also be identified by some method, such as painting, flagging, etc., prior to field inspection. (Where protective barriers are necessary to

prevent damage to a tree that is not to be removed, such barriers shall be erected before work starts.)

8. Trees must be planted at intervals of 30 feet where practical from the list provided by the Shade Tree Commission where the property borders a public roadway. At least a five foot tree lawn must be maintained for the planting of trees in these developments. Will provide specified list.

C. Tree Replacement Requirements.

1. Any person who removes one or more tree(s) with a DBH of 6” or more per acre, unless otherwise exempt under §130-12 shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. The species type and diversity of replacement trees shall be in accordance with a list of the types of permitted trees created by the Shade Tree Commission and maintained in the office of the Town Clerk, which may be updated as necessary from time to time.
3. Replacement tree(s) shall be:
 - a. replaced in kind with a tree that has an equal or greater DBH than tree removed or meet the Tree Replacement Criteria in the table below;
 - b. planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the Town;
 - c. 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; and
 - d. planted in the ground (not in temporary containers or pots, as these do not count towards tree replacement requirements).
 - e. planted with the adequate space required for the species selected to grow to maturity.
 - f. planted using the latest the standards set forth in ANSI Z60, American Standard for Nursery Stock.

Tree Replacement Requirements Table

Category	Size of Tree Removed (DBH)	Tree Replacement Criteria	Replacement Alternative Fee
1	DBH of 6” to 12.99”	Replant 1 tree in with minimum caliper of 2.5” for each tree removed	\$400 per tree removed
2	DBH of 13” to 22.99”	Replant 2 trees with minimum caliper of 2.5” for each tree removed	\$800 per tree removed

3	DBH of 23” to 32.99”	Replant 3 trees with minimum caliper of 2.5” for each tree removed	\$1200 per tree removed
4	DBH of 33” or greater	Replant 4 trees with minimum caliper of 2.5” for each tree removed	\$1600 per tree removed

D. 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:

1. Plant replacement trees in a separate area(s) approved by the Town Shade Tree Commission or Zoning Officer.
2. Pay a fee per tree removed as set forth in the “Tree Replacement Requirements Table.” This fee shall be placed into the Tree Escrow Fund.

§ 130-15. 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 barrier acceptable to the municipal official charged with the enforcement and administration of this section, shall be placed around trees that are not to be removed.
- B. The protection barriers shall be placed at a distance of at least 10 feet from the trunk of any tree or the tree dripline, whichever distance shall be greater, and shall remain in place until all construction activity on the property has terminated.
- C. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers.
- D. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
- E. No person shall:
 - a. Cut down or remove any tree except as permitted by this Article or allow or cause such cutting or removal.
 - b. Cause or allow any willful damage, injury or disfigurement of any tree growing within the property in question. For purposes of this Article, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result, but not limited to the following: cutting, gashing or slitting on 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 within 10 feet of any tree.
 - c. Store or pile building materials or debris or place construction equipment within 10 feet of any tree or within the protected zone 10 feet beyond the dripline, whichever is greater. The Code Enforcement Official or other member of the

Construction Office may use his or her discretion in determining violations pursuant to this subsection.

- F. In the event that any tree to be saved in connection with construction as set forth above or any tree planted in mitigation shall die within two years after planting, it shall be replaced by the applicant or the property owners within six months following the Tree Replacement Table in §130-14.

§ 130-16. Performance and Maintenance Bond.

- A. A cash bond for tree preservation and / or removal is require in all cases where tree removal, mitigation, and / or preservation is required in connection with a development applications before the Land Use Board. Such bond shall be posted with and held by the Town.
- B. Amount of the Bond. The amount of the bond shall be determined by the Land Use Board Engineer based upon replacement costs of the trees to be planted and / or preserved.
- C. Term of the Bond. Three years following the posting of the bond and upon the satisfactory completion of the required tree preservation and / or mitigation, the Town shall return the cash bond to the applicant. The cash bond shall be retained by the Town for this period to assure survival of the trees preserved or planted by the applicant in satisfaction of the preservation and / or mitigation requirements. Said bond shall be returned upon the recommendation of the Bord Engineer and the approval by resolution of the Mayor and Council.
- D. Forfeiture of Bond. Notwithstanding the above, the applicant and/or property owner shall forfeit the cash bond amount if the applicant and/or property owner fails to complete the required mitigation and tree planting within three years of posting of the bond. Prior to the forfeiture of any cash bond monies, the Board Engineer shall cause a written notice to be served upon the applicant and/or property owner who posted the cash bond. Service of the notice shall be made in person or by certified mail, return receipt requested. Upon service of any notice pursuant to this subsection, the applicant and/or property owner shall have 10 days, or such further time as the Mayor and Council shall agree, in writing, to plant the trees that have not been planted, or the applicant and/or property owner shall forfeit any cash bond amounts posted by the applicant and/or property owner. Any monies forfeited by the applicant and/or property owner shall be deposited in the Town's Tree Escrow Fund. The remedy of bond forfeiture shall be in addition to any other enforcement actions permitted to be taken by the Town.
- E. Violations. Failure to comply with the Town Code and conditions of development approval relating to tree preservation, mitigation, and / or removal shall also be considered a violation of this Chapter.
- F. Waiver of Bond Requirement. The Land Use Board may waive this bond requirement if there is minimal or no threat to trees on the subject property.

§ 130-17. Inspections

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

- A. The Shade Tree Commission or a 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.

§130-18. Enforcement.

- A. The Zoning Officer is designated as the enforcing agent for this article, or a designee.
- B. Upon review of as-built plans or site inspection of any major site development application, subdivision or soil movement activity, the Town 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.
- C. 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 are met.

§130-19. Violations and Penalties.

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a minimum fine of \$250.00 and maximum fine of \$1,000 per violation plus:

- 1) Replace trees on said impacted property in accordance with the criteria as set forth in this ordinance and contribute 25% of the alternative fee to the Tree Escrow Fund.
- 2) Pay 125% of the replacement value of trees removed per the replacement value table into the Tree Escrow Fund.

§130-20. Hardship Appeal.

In the event that an applicant believes the standards set forth in Subsections A and B above constitute a hardship which prohibits a reasonable use of all or substantially all of the property in question, an applicant may seek relief from the Mayor and Town Council. In the event that such relief is sought, the applicant shall submit a letter to the governing body stating the factual basis and reasons for the appeal. The governing body, upon submission of the letter to the Town Clerk, shall schedule a public hearing in connection with the requested relief. At the hearing, the applicant may present witnesses under oath, and any other interested parties may do the same. All witnesses shall be subject to cross-examination. The decision of the Mayor and Council shall be binding upon the municipal official in charge of enforcement and administration of this section.

SECTION 3. All Ordinances or parts of Ordinances, with the exception of § 4-19 Shade Tree Commission, inconsistent herewith are repealed as to such inconsistencies.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5. This Ordinance shall take effect upon final passage and publication according to law.

ADOPTED: June 12, 2024