

**BOROUGH OF DEMAREST
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 1121-23
AMENDING CHAPTER 163 – TREES**

Section 1. Purpose & Authority. The purpose of this ordinance is to amend Chapter 163-Article 2 of the Demarest Code.

Section 2. Amendment. Chapter 163-Article 2 is hereby amended to read in its entirety as set forth in the attachment to this ordinance.

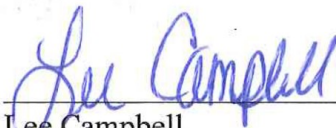
Section 3. Repealer. Ordinance No. 1084-20 – Tree Removal and Protection is hereby repealed.

Section 4. Savings and Construction. This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Demarest Code only where stated herein; otherwise, this ordinance is amendatory and supplementary to existing provisions of the Demarest Code; provided, however, that this ordinance shall in no way impair or affect any provisions of Chapter 163-Article 1.

Section 5. Codification. This ordinance shall be codified as amendments to the chapters set forth herein.

Section 6. Effective Date. This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:



Lee Campbell
Acting Municipal Clerk

Approved:



Brian Bernstein
Mayor

Introduced: June 12, 2023

Adopted: June 26, 2023

Chapter 163-Article 2 TREE REMOVAL AND PROTECTION

Chapter 163-Section 14 Short Title; Purpose.

a. This Article shall be known as the "*Tree Removal and Protection Regulations of the Borough of Demarest.*"

b. *Findings and Purpose.* The Mayor and Council of the Borough of Demarest finds that the preservation, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; helps to decrease the amount and rate of storm water runoff and the potential damage it may create; 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; helps to replenish ground water supplies; acts to moderate extremes of temperature and to provide shade; 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 Borough's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare.

Chapter 163-Section 15 Definitions. The following definitions shall apply to this Article:

ACCESSORY BUILDING means a building the use of which is incidental to that of the Principal Building and which is located in the same property.

BUFFER AREA means the area along the side yard or rear yard of any lot within ten (10) feet from the property line.

COMMISSION means the Borough of Demarest Shade Tree Commission.

COVERED TREE means any Tree located in the Borough of Demarest with a Diameter of four (4) inches or more, but excluding Public Plantings as defined herein.

DIAMETER means: (a) for an existing tree, the diameter of the trunk measured at four and one-half (4 1/2) feet above ground level on the downhill side; and (b) for a tree to be planted, the diameter of the trunk measured at six (6) inches above the ground for a tree with a diameter of four (4) inches or less and twelve (12) inches above the ground for a tree more than four (4) inches in diameter. The Diameter of a tree with multiple trunks shall be calculated by multiplying the Diameter of the largest trunk by 1.5 times.

DRIP LINE means an imaginary line on the ground beneath a tree, the location determined by extending a vertical line from the outermost branches of a tree to the ground.

LANDMARK TREE means any tree designated as such by the Mayor and Council pursuant to the standards set forth herein.

PRINCIPAL BUILDING means the main building constructed for occupancy or use on the property.

PUBLIC PLANTINGS means any tree or shrubbery upon and in the streets, highways, public places, parks and parkways of the Borough of Demarest with respect to which the Commission

has authority under N.J.S.A. 40:64-1, *et seq.*, and/or Chapter 163-Article 1 of the Demarest Code.

SHADE TREE means a deciduous woody tree with a Diameter of at least two (2) inches and an approximate height of ten (10) to twelve (12) feet when planted, and a height of at least twenty-five (25) feet and a crown spread of at least fifteen (15) feet at maturity.

STRUCTURE means a combination of materials forming a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, including but not limited to a Principal Building (or addition thereto), an Accessory Building or a driveway or walkway.

TREE means any deciduous or evergreen woody perennial and its root system.

Chapter 163-Section 16 Permit Required. No person shall cut down or remove any Covered Tree unless and until a tree removal permit has been obtained pursuant to this Article 2 of Chapter 163.

Chapter 163-Section 17 Application Procedure. Application for a permit to remove a Covered Tree shall be made by completion and submission of the following:

- a. An application on forms provided by the Borough containing the following information: name and address of the owner of the property in question and the applicant, if other than the property owner; the street address and tax lot and block of the property in question; the number of Covered Trees to be removed from the property in question; and such other information as may be required; and
- b. A tree location plan consisting of a survey or map drawn to scale showing the location of all Covered Trees on the property in question, with the species and Diameter of all such trees, and indicating with an "X" all Covered Trees proposed to be removed; the plan must also show the location of any existing or proposed Structures; and
- c. A separate list of all Covered Trees proposed to be removed from the property in question, identifying each such tree by species and Diameter, stating the condition of each tree as "hazardous," "dead," "dying," "poor," or "good," and explaining why removal is justified under the standards of Section 19a hereof; and
- d. If tree mitigation is required pursuant to subsection 19c hereof, a tree mitigation plan consisting of a survey or map drawn to scale showing the location of all mitigative trees to be planted, the species of such trees and their Diameter and height as required; and
- e. If the proposed removal of a Covered Tree is for site clearing or other purpose pursuant to a development application, the tree removal plan and the tree mitigation plan must be prepared, signed and sealed by a licensed professional engineer, landscape architect or land surveyor; and
- f. The applicant shall place a one-inch-wide red ribbon at a height of four and one-half (4 1/2) feet above ground level around the trunk of each Covered Tree proposed to be removed, so that the proposed tree removal may be inspected in the field.

g. In the event that a Covered Tree proposed to be removed has a Drip Line within the Buffer Area, the applicant shall notify the owner of the property adjacent to such Buffer Area of the proposed tree removal by certified mail/return receipt requested or by personal service; proof of service of notice shall be submitted with the tree removal permit application. The owner of adjacent property who receives such notification may submit to the Commission a written objection to removal of the tree within ten (10) days of such notification. The Commission will investigate and give due consideration to such written objection prior to the issuance of a tree removal permit.

h. In the case of any Covered Tree located on a property line, written consent from the adjacent property owner must be submitted with the tree removal permit application.

i. In determining the total number of Covered Trees that an applicant is applying to remove on a particular application, the application fee shall be determined as if the Covered Trees on the current application are incremental to the total number of Covered Trees that an applicant has removed from the same lot within twenty-four (24) months prior to the current application.

Chapter 163-Section 18 Application Fees. The fee for a permit to remove a Covered Tree shall be based on the number of such trees proposed to be removed:

<i>Number of Covered Trees</i>	<i>Application Fee</i>
1 to 3	\$ 25.00
4 to 6	\$100.00
7 to 10	\$ 250.00
11 to 20	\$ 500.00
21 to 30	\$ 1,000.00
31 and over	\$ 2,500.00 plus an additional \$100.00 for each Covered Tree in excess of 50

The permit fee for removal of a dead, dying or hazardous Covered Tree that does not require mitigation pursuant to subsection 19c1 hereof shall be waived if the Commission's inspection confirms the tree's condition, provided that the applicant satisfies all of the other requirements of this Article (i.e., applying for and awaiting issuance of a permit).

Chapter 163-Section 19 Standards for Application Review. The following standards shall apply for review of a permit to remove a Covered Tree:

a. *Permitted Removal.* No Covered Tree shall be permitted to be removed unless the tree:

1. Is dead, dying or poses a safety hazard (*no mitigation is required unless subsection 19c1 provides otherwise*);

2. Has a Drip Line which: (i) is not in a Buffer Area; (ii) is in a Buffer Area (provided that the requirements set forth in subsection 17g or 17h hereof, as applicable, are complied with); or (iii) is within ten (10) feet of an existing permitted Principal Building or Accessory Building (*mitigation is required*).

3. Is located within the footprint of a proposed Structure, or within ten (10) feet of a proposed Structure, and its removal is part of the plan for a proposed Structure for which an application for a construction permit or site plan approval has been submitted (*see also* subsection 19b) (*mitigation is required*).

4. If neither subsection 19a1, 2 nor 3 applies with respect to a particular Covered Tree, no tree removal permit for such tree shall be issued as of right. In the event an applicant wishes to remove a Covered Tree notwithstanding that its removal is not permitted as of right, the applicant may seek relief by filing an appeal pursuant to Section 25 hereof.

b. *Tree Requirements in Connection With an Application for a Construction Permit or for Site Plan Approval.* Neither a construction permit nor site plan approval shall be granted unless: (i) the plan provides for the property in question (or for every lot in a multi-lot project) to have, after completion of construction, at least one (1) Shade Tree per 2,500 square feet of lot area (including improved and unimproved area), preferably distributed in different areas around the lot, and (ii) the plan provides for mitigative plantings as required under subsection 19c for all Covered Trees proposed to be removed. If any Covered Trees are to be removed, no construction may commence until a tree removal permit has been issued.

c. *Mitigation.* Mitigation for removal of a Covered Tree shall be required as follows:

1. Mitigation shall not be required in connection with removal of a Covered Tree pursuant to subsection 19a1 hereof (i.e., the tree is dead, dying or hazardous) if the tree has been planted for at least five (5) years, there has been no damage to the tree by construction or otherwise by any person, and there has been no soil moving within fifteen (15) feet of such tree within five (5) years; otherwise, mitigation shall be required.

2. Where mitigation is required, it shall be accomplished by planting mitigative trees on the property in question as follows:

Diameter of Covered Tree Being Removed	Mitigation Required*
Less than 4"	None
4" to less than 6"	1 tree** for every 2 trees being removed
6" to less than 13"	1 tree** for every tree being removed
13" to less than 23"	2 trees* for every tree being removed
23" to less than 33"	3 trees* for every tree being removed
33" or greater	4 trees* for every tree being removed
Landmark Tree	5 trees** for every tree being removed

*No mitigation is required for up to three (3) Covered Trees with a Diameter of less than six (6) inches to be removed in a twenty-four (24) month period, provided that the applicant satisfies all of the other requirements of this Article (i.e., applying for and awaiting issuance of a permit).

**Deciduous trees shall be replaced with Shade Trees. Evergreen trees shall be replaced with trees with a Diameter of two (2) inches; they may be deciduous or evergreen unless another section of this Article specifically requires one or the other.

3. The applicant may elect to plant three (3) deciduous replacement trees with a Diameter of at least two (2) inches for each Shade Tree required in mitigation; provided, however, that this option may not be exercised for more than three (3) Shade Trees.

4. In the event the applicant asserts the prescribed mitigative planting of trees on the property in question would be inappropriate, the applicant may, in lieu of planting trees, pay a fee of \$500 for each tree to have been planted in mitigation; provided, however, that this option shall not be exercised with respect to more than five (5) mitigative trees.

5. In the event that it is unknown or in question in any given instance whether mitigation should be determined on the basis of a deciduous or evergreen tree being removed, mitigation shall be required on the basis of a deciduous tree.

6. In the event that removal of a Covered Tree occurs without a tree removal permit:

(i) mitigation for such tree shall be required at a rate of two (2) times the number of trees that would have been required pursuant to subsection 19c2 above;

(ii) if the type and/or Diameter of such Covered Tree is unknown, it shall be presumed to have been a deciduous tree with a Diameter of six (6) inches.

(iii) if it is unknown how many Covered Trees were removed, the number of Covered Trees presumed to have been removed shall be computed by dividing the total square footage of the property in question by 2,500 and subtracting therefrom the number of healthy Covered Trees with a Diameter of at least six (6) inches remaining on the property.

By way of illustration, if the property is 10,000 square feet and 1 healthy Covered Tree with a 6-inch Diameter remains, it is presumed that 3 Covered Trees with a Diameter of six (6) inches were removed, and the mitigation requirement is 6 Shade Trees:

- Calculation of Trees Removed: $10,000 \text{ sq.ft.} \div 2,500 = 4$, minus 1 = 3 deciduous Covered Trees with a 6-inch Diameter
- Mitigation Requirement: 1 Shade Tree for each Covered Tree removed (3), times 2 for removal without a permit = 6 Shade Trees required

7. In the event that a tree planted in mitigation dies within twenty-four (24) months after planting, it shall be replaced by the applicant or property owner within six (6) months thereafter.

8. Mitigation in any instance is to be considered implementation of the purposes of this Article, and not a penalty. Mitigation shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this Article.

Chapter 163-Section 20 Performance Bond.

a. As a precondition to the issuance of a tree removal permit where mitigation is required pursuant to section 19c hereof, the applicant shall post a cash performance bond, in addition to any construction-related bond, to assure satisfactory completion of the tree removal mitigation. The amount of the bond shall be \$500.00 for each tree required to be planted in mitigation.

b. If the applicant fails to complete mitigative planting within the time of completion set forth in Section 21 hereof, including any extensions granted thereunder, the Commission may cause the mitigative trees to be planted at the property owner's expense by claiming against the performance bond for the Commission's cost of planting the required trees.

c. If the applicant or property owner fails to timely replace a mitigative tree that has died in accordance with subsection 19c8, the Commission may cause the mitigative tree to be planted at the property owner's expense by claiming against the performance bond for the Commission's cost of planting the replacement tree.

d. Eighty (80%) percent of the performance bond shall be returned to the applicant upon submission of the applicant's written request, provided that all required initial mitigative planting has been satisfactorily completed. The remainder of the performance bond shall be returned to the applicant upon the applicant's written request not less than twenty-four (24) months after the date on which the initial mitigative planting was satisfactorily completed, provided that all requirements of this Article have been satisfied.

Chapter 163-Section 21 Time of Completion.

a. The trees required to be planted in mitigation pursuant to subsection 19c shall be planted within six (6) months after the issuance of the tree removal permit if the tree removal was not in conjunction with building construction; or if the tree removal was in conjunction with building construction, within six (6) months after completion of the building, the issuance of a certificate of occupancy or the issuance of a certificate of approval, whichever shall be sooner.

b. The applicant may submit a written request to the Commission for an extension of up to three (3) months of the time within which trees must be planted or replanted, due to unforeseen circumstances or weather conditions, which request shall not be unreasonably denied. Any request for an extension of time greater than three (3) months must be submitted in writing to the Mayor and Council for consideration.

c. The applicant shall contact the Commission within fourteen (14) calendar days after the completion of required planting to schedule a date and time for an inspection by the Commission to determine whether the required planting has been completed satisfactorily.

Chapter 163-Section 22 Protection of Existing Trees. In connection with any building construction:

a. Subsequent to permitted tree clearing but prior to the start of construction, snow fencing or other protective barrier acceptable to the municipal official authorized to issue the building permit shall be placed around all Covered Trees that are not to be removed. The

protection barriers shall remain in place until all construction activity on the property has terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area protected by barriers or within fifteen (15) feet from any tree. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

b. No person shall cause or allow any willful damage, injury or disfigurement of any tree growing within the Borough of Demarest. 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 any of the following: cutting, gashing or slitting on any tree; pouring any toxic liquid or other material on any tree, or on the nearby ground; constructing or placing any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placing or removing any soil within fifteen (15) feet from any tree.

c. No person shall store or pile building materials or debris or place construction equipment within fifteen (15) feet of any tree.

d. In the event that any tree to be saved in connection with construction as set forth above shall die within twenty-four (24) months after completion of construction, it shall be replaced by the applicant or property owner planting a replacement tree within three (3) months, plus any extensions permitted under Section 20 hereof. If the applicant or property owner fails to timely replace such tree, the Borough may cause the replacement tree to be planted at the property owner's expense by claiming against the construction escrow for the cost of planting the replacement tree.

Chapter 163-Section 23 Protection of Landmark Trees.

a. Notwithstanding any other provision of this Article, no person shall remove any Landmark Tree without the prior approval of the Mayor and Council.

b. Upon the recommendation of the Committee, the Mayor and Council shall determine whether to designate a tree as a Landmark Tree using the following criteria: (i) the tree species is rare; (ii) the tree is more than one hundred (100) years old; (iii) the tree is of an abnormal height or has an abnormal trunk Diameter or Drip Line for a tree of its species; or (iv) the location, shade value, fragrance, erosion control, aesthetic features, or scenic enhancement of such tree is of special importance to the Borough of Demarest.

c. Trees designated as Landmark Trees by the Mayor and Council shall be shown on an official Borough Map with appropriate code marks signifying each tree's designation, number, species, age, size and other distinguishing characteristics for ready reference and periodic monitoring.

d. If the owner of the property on which a Landmark Tree is located consents thereto, the Borough may identify such tree as a Landmark Tree by the placement of a suitable marker thereon.

e. Mitigation shall be required for each Landmark Tree permitted to be removed under subsection 23e above, by the applicant planting on the property five (5) Shade Trees of a species determined by the Commission considering the species and location of the Landmark Tree being

removed. In the event the applicant asserts the planting of one or more Shade Trees on the property would be inappropriate, and the Commission and the Mayor and Council agree, the applicant may, in lieu of planting trees, pay the sum of five hundred (\$500.00) dollars for each Shade Tree required but not being planted; provided, however, no permit fee, mitigation or payment shall be required for the removal of a dead, dying or hazardous Landmark Tree unless subsection 19c1 requires mitigation, and further provided that the applicant satisfies all of the other requirements of this Article (i.e., applying for and awaiting issuance of a permit).

f. If and when any Landmark Tree is removed, the Commission shall arrange for the necessary changes to be made to the official Landmark Tree inventory records and Borough Map.

Chapter 163-Section 24 Administration and Enforcement. This Article shall be administered by the Commission, the Mayor and Council, or their respective designee(s), in their respective capacities as provided in this Article. This ordinance shall be enforced by the Borough of Demarest Police Department, the Demarest Construction Official and/or the Demarest Code Enforcement Official during the course of ordinary enforcement duties.

Chapter 163-Section 25 Appeal to Mayor and Council. In the event an applicant believes the strict application of this Article constitutes a hardship which prohibits reasonable use of the applicant's property, such person shall have the right, within thirty (30) days of the issuance of an adverse decision by the Commission or a municipal official charged with administration of enforcement of this ordinance, to appeal to the Mayor and Borough Council, which shall take action as it deems appropriate in the matter. Such appeal shall be commenced by submitting to the Borough Clerk a digital copy or an additional ten (10) paper copies of the documents required to be submitted for the tree removal permit, together with a digital copy or ten (10) paper copies of a statement as to the reasons for the claimed hardship. In addition, the applicant shall submit a fee for the hearing of the matter in the amount of five hundred (\$500.00) dollars, which fee shall be refunded to the applicant if the hardship permit is granted. Upon submission of a complete appeal application, the Borough Clerk shall schedule a public hearing before the Mayor and Council in connection with the requested relief. The applicant shall cause to be published in an official newspaper of the Borough a notice setting forth the time, date and place of the hearing to be so held, together with a brief statement of the relief requested. Such notice must be published at least ten (10) days prior to the date of the hearing. Additionally, the applicant shall cause a similar notice to be served upon all property owners within two hundred (200) feet of the property in question, by certified mail/return receipt requested or by personal service. Proof of publication and service of notice shall be required to be submitted to the Borough Clerk prior to the hearing. 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 Commission and any other municipal official in charge of enforcement of this Article.

Chapter 163-Section 26 Violations and Penalties. Any person who violates any provision of this Article shall, upon conviction thereof, be punished by a fine of one thousand (\$1,000.00) dollars for the violation, plus an additional five hundred (\$500.00) dollars for each tree that would have been required to be planted for mitigation. The removal of a Covered Tree is not subject to a fine limit. The aforementioned penalties may, upon a written plea of "guilty," be paid

and satisfied through the Violations Bureau of the Municipal Court without the requirement of a court appearance.

Chapter 163-Section 27 Commission Trust Account. All fees for tree removal permit applications, all fees and payments in lieu of required tree mitigation, all forfeited cash performance bonds, all fines and penalties imposed for violations, and all funds otherwise payable pursuant to Article 1 or Article 2 of Chapter 163 of the Demarest Code (excluding cash performance bonds) shall be deposited to the Commission Trust Account, to be applied for use in the administration of the said articles (for example, without limitation, to engage an arborist to advise the Commission concerning a certain proposed tree removal or mitigation), or for the planting, care, preservation, maintenance, control or removal of trees in the Borough of Demarest. Cash performance bonds required under the said articles shall be maintained in a separate escrow account maintained by the Borough.