

TOWNSHIP OF FAIRFIELD
ORDINANCE #2024-11

AN ORDINANCE OF THE TOWNSHIP OF FAIRFIELD, ESSEX COUNTY, NEW
JERSEY AMENDING CHAPTER 45, ZONING, SECTION 45-17, TREE PROTECTION,
OF THE TOWNSHIP CODE

WHEREAS, the Governing Body of the Township of Fairfield desires to amend the section of the Code referenced above regarding tree removal protections, pursuant to new New Jersey stormwater regulations.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Fairfield, County of Essex, State of New Jersey, as follows:

SECTION 1. Chapter 45, entitled "Zoning", Section 45-17, entitled "Tree Protection", of the Township Code of the Township of Fairfield is hereby amended to read as follows: (All additions are shown in **bold italics with underlines**. The deletions are shown as ~~strikeovers in bold italics.~~)

§45-17 TREE PROTECTION.

A. Purpose. ~~The Township of Fairfield~~ **An ordinance to establish requirements for tree removal and replacement in the Township of Fairfield to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare. finds that the development of unimproved or vacant land to accommodate major subdivision applications, nonresidential site plan applications, and multi-family attached residential development has resulted in indiscriminate and excess cutting of trees upon tracts of land and has resulted in creating increased surface drainage and soil erosion, thereby increasing municipal costs to control drainage within the Township. It further finds that such excessive removal and destruction of trees impairs the proper occupancy of areas and impairs the stability and value of improved and unimproved real property in such areas, with attendant deterioration of conditions affecting the health, safety and general welfare of the inhabitants of the Township, and further finds that regulations for the indiscriminate removal of trees is within the police power of the Township.**

~~b-B.~~ Definitions. For the purpose of this section, the following words shall have the meanings indicated:

APPROPRIATE DECISIONAL AUTHORITY — Shall mean the municipal entity, either the Zoning Officer, Planning Board or Zoning Board of Adjustment, to which the application for tree removal permit is submitted.

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.

DRIP LINE — Shall mean the limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than six feet from the trunk, whichever is greater.

DIAMETER POINT OF MEASURE(DPM) - the diameter of a tree measured four and one-half (4 ½) feet (forestry method) above the ground level on the downhill side for existing trees. Trees utilized in the replacement of existing trees or proposed as part of a landscape plan shall be measured twelve (12) inches above ground level for trees

over a four (4) inch caliper; the measurement shall be six (6) inches above grade for trees up to four (4) inch caliper (nursery method). Diameter at point of measurement may appear as the abbreviation "DPM".

PERMITS — Shall mean a license issued by the Zoning Officer to remove or destroy trees.

STREET TREE – Shall mean 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 — Shall mean any living tree having a trunk of a diameter point of measure (DPM) of six inches or greater measuring at a height of three feet above natural grade.

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.

~~e. — Cutting or Removal Restricted. With the exception of the exemptions set forth in Subsection c, no person shall cut or remove, or cause to be cut or removed, any tree with a diameter of eight inches or greater upon any lands within the Township unless the cutting or removal can be accomplished in compliance with the provisions of this section. Additionally, the following shall not be permitted:~~

- ~~1. — No person shall place any guy wire, brace or other device on any tree in such a manner as to injure it;~~
- ~~2. — No person shall permit any brine, gas or injurious chemical or liquid to come in contact with the stump or roots of any tree or shrub upon a public highway, other than routine salting for hazardous conditions as affects the health and safety of the general public.~~

~~d. — Permit Required for Removal of Trees/Shrubs on Township Owned Land. No person shall do or cause to be done any of the following acts affecting trees, shrubbery or ornamental material planted or growing naturally within the roadways or public places under the jurisdiction of the Township, except with a written permit obtained from the Zoning Officer:~~

- ~~1. — Cut, trim, break, disturb the roots of, or spray with defoliants any living tree or shrub; or injure, misuse or remove any structure or devices placed to support or protect any tree or shrubs;~~
- ~~2. — Place spikes in any living tree or shrub;~~
- ~~3. — Fasten any rope, wire, electric attachments, sign or other device to a tree or shrub, or to any guard about such tree or shrub;~~
- ~~4. — Pile any building material, or make any mortar or cement within six feet of a tree or shrub;~~
- ~~5. — Change the grade of the soil within the limits of the lateral spread of the branches of any such tree.~~

~~e. Exemptions. The following shall be exempt from the requirements of this section: Any lot that is developed for detached residential use, commercial nurseries and cemeteries; minor subdivision application for residential lots; trees directed to be removed by governmental authority; removal of trees that are dead, dying or diseased, or have suffered damage; pruning or removal of trees within the right of way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight lines; and, projects that have received major subdivision or site plan approval prior to the effective date of this section. Amended major subdivisions and site plans affecting vacant lots are subject to the provisions of this section.~~

f. **C. Removal of Trees — Permit Required.** ~~Except as exempted in Subsection h, no tree~~ No trees with a DIAMETER POINT OF MEASURE (DPM) over 6" shall be cut or otherwise removed from any lands in the Township without a tree removal permit. All applications for approval of a major subdivision, minor subdivision for nonresidential lots, or any site plan requiring tree removal, unless otherwise exempted pursuant to this chapter, shall include an application for a tree removal permit. When an application for a tree removal permit is made for purposes not related to a development application, the application shall be submitted to the Zoning Officer. ~~No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except for trees directed to be removed pursuant to Subsection e above.~~ Trees directed to be removed by a public utility or governmental authority are exempt from obtaining a permit.

~~g.~~ **D. Permit Application Procedures.**

1. Tree Removal Application Form for Projects Associated with Development Application. The application form shall contain the applicant's name, name of property owner and owner's consent, if different from applicant. A sketch depicting the location, size and species of trees shall be provided, along with reasons for the tree removal. Proof of payment shall also be provided.

2. Tree Removal Requirements for Nonresidential Properties Not Associated with Site Plans or Subdivisions. The applicant/owner shall submit an application for a tree removal permit to the Zoning Officer. The application shall contain the name of the applicant, name of owner of the property with consent of owner, if different from applicant, location and species of trees on a sketch of property and reasons for the removal or destruction.

3. Application Fee. The fee for a tree removal permit shall be \$150 for single dwelling lots and a fee of \$100 per tree with a \$150 minimum for multi-family and non-residential lots

~~h.~~ **E. Review Standards.** A tree removal permit may only be granted for the following reasons and under the following terms and conditions:

~~1. Where the area proposed for tree removal is to be occupied by a building or other similar structure, the area permitted to be cleared shall extend a maximum of 30 feet beyond the building footprint. In the case of a street or roadway, driveway, patio, swimming pool, recreation area, utility line easement or right-of-way the area to be cleared shall extend a maximum of 15 feet beyond the edge of these structures or areas. A minimum of 10% of existing forested areas shall be protected from disturbance.~~

~~In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection h1 above:~~

~~That the continued presence of such trees is likely to cause danger to persons or property upon the property for which removal is sought, or upon adjoining property;~~

~~That the area where such trees are located has a cut, depression or fill of land, or the topography of the land is of such character as to be injurious or dangerous to such trees, or to trees located nearby.~~

Upon a finding by the appropriate decisional authority that the proposed tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or development of remaining trees or shrubs on the property of the applicant, or upon adjacent property; soil erosion; sedimentation; and dust; drainage or sewerage problems; and dangerous or hazardous conditions.

2. The appropriate decisional authority shall have the power to affix reasonable conditions to the granting of the permit for the removal of trees.

3. Whenever an application for tree removal is granted under the terms and conditions of this section, the following protective measures shall be observed:

(a) No material or temporary soil deposits shall be placed within the drip line of any existing tree to be preserved;

(b) Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this section nor shall such equipment be operated at any time in such a manner as to break, tear or bruise or otherwise injure any living trees.

4. Appeal. In the event of denial of any permit submitted to the Zoning Officer, the applicant seeking appeal from the decision shall proceed before the Board of Adjustment as provided by statute.

i. Approval of Permit.

~~1. Where the permit application is submitted as part of an application for minor subdivision for nonresidential development, major subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to such applications as set forth in the Municipal Land Use Law.~~

~~2. Where the permit application is not made in connection with a subdivision or site plan application, the Zoning Officer shall act on the application within 10 working days of receipt or within such additional time as is consented to by the applicant. Failure to act within 10 working days, or any extension thereof, shall be deemed to be an approval of the application and thereafter the Zoning Officer shall issue a tree removal permit.~~

~~3. No approval shall be granted by the Board or Zoning Officer if it is found that the proposed tree removal is contrary to the best interests of the public health, safety or general welfare.~~

i. F. Tree Replacement Requirements

Exemptions. The following shall be exempt from the tree replacement requirements of this section:

1. Residents who remove less than four (4) non-street trees per acre that have a DBH of less than 32.99" of the Tree Replacement Requirements Table within a five-year period.

2. Removal of evergreen trees or trees that are dead, dying or diseased, or have suffered damage;

Replacement tree(s) shall:

1. Be 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;

2. 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. 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; and

4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

5. No trees identified as invasive in New Jersey shall be used. The following is a list of trees and plants that shall not be used as replacement trees or be planted due to their invasive and damaging nature. This list has been established in order to protect and promote public health, safety and welfare, and protect public and private properties and indigenous and other plant material through the restriction and prohibition of new plantings of invasive plants, and the cultivating and/or maintenance and/or growing of existing plantings of invasive plants.

(a) Acer platanoides (Norway Maple)

(b) Ailanthus altissima (Tree of Heaven)

(c) Albizia julibrissin (Mimosa)

(d) Bamboo

(e) Fraxinus (Ash)

(f) Invasive plants

(g) Pinus nigra (Austrian Pine)

(h) Prunus cerasifera (Purple Leaf Plum)

(i) Prunus padus (Purple Leaf Bird Cherry ‘Summer Glow’)

(j) Pyrus calleryana (Bradford Pear/Callery Pear)

(k) Sorbus americana (Mountain Ash)

(l) Tsuga canadensis (Hemlock) – unless controlled for scale and adelgid

| Category | Tree Removed | Tree Replacement Criteria |
|----------|---|--|
| 1 | DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99” | Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed |
| 2 | DBH of 13” to 22.99” | Replant 2 trees with minimum tree calipers of 1.5” for each tree removed |
| 3 | DBH of 23” to 32.99” | Replant 3 trees with minimum tree calipers of 1.5” for each tree removed |
| 4 | DBH of 33” or greater | Replant 4 trees with minimum tree calipers of 1.5” for each tree removed |

Replacement Alternatives:

1. 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:

a. Plant replacement trees in a separate area(s) approved by the municipality.

b. Pay a fee of \$250 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

j. G. Trees and Shrubs Dangerous to Public Safety.

1. Removal Required; Notice. In case any tree or shrub or any part thereof along the public highway shall become dangerous to public safety, the owner of the property in front of which such tree or shrub is located, shall forthwith remove the same, or the required part thereof, upon receipt of written directive to that effect from the ~~Department of Construction~~ Official Zoning Officer.
2. Standard Established. The owner or tenant of any lands lying within the Township shall keep all brush, hedges and other plant life, growing within both 10 feet of any roadway and within 25 feet of the intersection of two roadways, cut to a height of not more than 2.5 feet. This shall not require the cutting down of any trees where there is vision past the trees at a height of between two and 2.5 feet from the ground and eight feet from the ground.
3. Removal by Township. If the owner fails to remove the tree or shrub or portion thereof within two weeks after receipt of written notice to do so, the work shall be performed by the Township under the supervision of the Zoning ~~Official Officer~~ Official Officer or designated Township agent, who shall certify the cost thereof to the Council.
4. Costs Charged Against Lands; Lien Established. Upon receipt of the certified costs, the Township shall examine same and if found correct shall cause the costs to be charged against the lands, or if the Council deems the costs to be excessive, shall cause the reasonable cost thereof to be charged against the lands. The amount so charged shall forthwith become a lien upon the lands and shall be added to and become and form part of the taxes next to be assessed and levied upon the lands, the same to bear interest at the same rate as other taxes, and shall be collected and enforced by the same officer and in the same manner as taxes.

~~k. J.~~ **Surety Bond Required Where Building Permit is Sought.** In all cases of application for permit where a building permit is applied for, there shall accompany the application a cash or surety bond in a minimum sum of \$500 for each acre with the application for building permit with the amount to be determined by the Zoning Officer, which bond shall assure compliance with the preservation of those trees not to be removed, which bond shall be returned with the certificate of occupancy less any costs expended by the Township to replace trees improperly removed or destroyed in violation of the permit.

~~l.~~ **Appeal.** ~~In the event of denial of any permit submitted to the Zoning Officer, the applicant seeking appeal from the decision shall proceed before the Board of Adjustment as provided by statute.~~

~~m.~~ **Application Fee.** ~~The fee for a tree removal permit not associated with a minor or major subdivision or site plan shall be \$25 with each application.~~

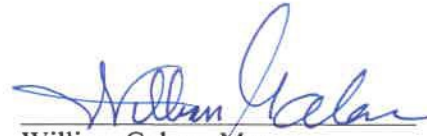
~~n.~~ **Penalty.** ~~Any person violating any of the provisions of this section shall be subject to a fine not exceeding the general penalties established in this Code.~~

SECTION 2. All actions of the Township taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

SECTION 3. If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any remaining part thereof.

SECTION 4. All Ordinances or parts of Ordinances of the Township of Fairfield heretofore adopted that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. This Ordinance shall take effect immediately upon its final passage, approval and publication as provided by law.

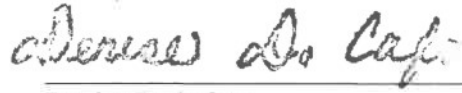

William Galese, Mayor

ATTEST:

Denise D. Cafone, Municipal Clerk

NOTICE

"NOTICE is hereby given that the foregoing Ordinance was introduced and passed upon First Reading at a Meeting of the Mayor and Council of the Township of Fairfield on May 28, 2024 Said ordinance shall have a second Reading and Public Hearing and be considered for final adoption at a meeting of said Governing Body to be held on June 24, 2024 at 7:00 p.m. in the Township Municipal Building, 230 Fairfield Road, Fairfield, N.J."


Denise D. Cafone
Municipal Clerk

INTRODUCTION OF ORDINANCE –

ORDINANCE #2024-11 ~ AN ORDINANCE OF THE TOWNSHIP OF FAIRFIELD, ESSEX COUNTY, NEW JERSEY AMENDING CHAPTER 45, ZONING, SECTION 45-17, TREE PROTECTION, OF THE TOWNSHIP CODE

INTRODUCED BY: Councilman LaForgia
SECONDED BY: Councilman Campisi
PUBLISHED: June 6, 2024

ROLL CALL VOTE

| GOVERNING BODY | AYES | NAYS | ABSTAIN | ABSENT | NOT VOTING |
|---|-------------|-------------|----------------|---------------|-------------------|
| COUNCIL PRESIDENT JOSEPH CIFELLI | X | | | | |
| COUNCILMAN JOHN LAFORGIA | X | | | | |
| COUNCILMAN MICHAEL B MCGLYNN | X | | | | |
| COUNCILMAN PETER CAMPISI | X | | | | |
| MAYOR WILLIAM GALESE | X | | | | |

2ND READING AND PUBLIC HEARING – JUNE 24, 2024

INTRODUCED BY: Council President Cifelli
SECONDED BY: Councilman LaForgia
PUBLISHED: June 27, 2024

ROLL CALL VOTE

| GOVERNING BODY | AYES | NAYS | ABSTAIN | ABSENT | NOT VOTING |
|---|-------------|-------------|----------------|---------------|-------------------|
| COUNCIL PRESIDENT JOSEPH CIFELLI | X | | | | |
| COUNCILMAN JOHN LAFORGIA | X | | | | |
| COUNCILMAN MICHAEL B MCGLYNN | X | | | | |
| COUNCILMAN PETER CAMPISI | | | | X | |
| MAYOR WILLIAM GALESE | X | | | | |