BOROUGH OF LITTLE SILVER
ORDINANCE #879-24

ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF LITTLE SILVER, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY TO ADD A NEW CHAPTER 27 ENTITLED "TREE PROTECTION AND REPLACEMENT"

WHEREAS, the Mayor and Borough Council for the Borough of Little Silver (the "Borough") have determined that the preservation, protection, maintenance and controlled removal of trees is essential to the health, safety, economy and general welfare of the Borough; and

WHEREAS, New Jersey public agencies such as the Department of Environmental Protection (the "NJ DEP") have made prioritized promotion of local stewardship and effective management of trees and forest ecosystems in New Jersey's communities; and

WHEREAS, the NJ DEP is imposing requirements on municipalities to put in place ordinances regulating tree removal and replacement; and

WHEREAS, the Mayor and Borough Council find it to be in the best interest of the Borough to have a comprehensive ordinance regulating protection and replacement of trees.

NOW THEREFORE BE IT ORDAINED by the Mayor and Borough Council of the Borough of Little Silver, County of Monmouth, and State of New Jersey, that the Revised General Ordinances of the Borough of Little Silver (the "Code") be amended as follows (additions to text indicated by bold text; deletions indicated by strikeout):

Section 1. Chapter 27 is hereby added to the Code as follows:

§ 27-1. PREAMBLE. The Borough of Little Silver finds that the existence of trees within the Borough makes a fundamental contribution to the health, safety, and general welfare of Little Silver citizens and the community at large. Trees, in addition to their aesthetic benefits, are essential to riparian habitat, wildlife, energy conservation, temperature moderation, and the healthy ecology of the area; trees help improve air quality and reduce global warming. These benefits to the community and environment increase as trees mature. Maturation of trees protects surface water quality, provides shade, offers windbreaks, controls water pollution by reducing soil erosion and flooding, offers a natural barrier to noise, and yields advantageous microclimates, and fundamental ecological systems. Trees contribute to property values of residential and commercial establishments and preserve and enhance the natural beauty and appearance of Little Silver and its historic, nonurban character. Our community's investment in its tree resources has accrued over many years. This investment can be rapidly squandered by indiscriminate damage to and destruction of trees, especially mature and/or specimen trees. Unregulated destruction of trees causes barren and unsightly conditions, increases the municipal expense to control drainage and soil erosion problems, impairs the stability and value of the developed and undeveloped property, and negatively

impacts the health, safety, environment, ecosystems, and general welfare of the inhabitants of the Borough of Little Silver. This chapter establishes policies, regulations, and standards necessary to ensure that the Borough will continue to realize the benefits provided by our trees. The provisions of this chapter are enacted to:

A. Control and regulate the indiscriminate cutting of trees.

B. Increase species and age diversity of our tree population to provide long-term stability of the aggregate canopy and ecosystem by requiring replanting when trees are removed.

C. Preserve our trees and the nonurban appearance of our Borough by encouraging owners of existing homes, vacant lands, and commercial parcels to save or replace mature tree species when developing their parcels.

D. Protect public trees in municipal parks and easements.

E. Facilitate Borough stewardship of air, water, land, and living resources, to sustainably protect the environment for the use of this and future generations.

§ 27-2. DEFINITIONS. For this chapter, the following words shall have the following meanings:

A. BUILDING INSPECTOR - Building Inspector of the Borough of Little Silver or his/her designee.

B. CODE – The Revised General Ordinances of the Borough of Little Silver, 1973.

C. LICENSED TREE EXPERT - An individual who has obtained knowledge, experience, and competency in arboriculture or forestry and is currently licensed as a Licensed Tree Expert by the New Jersey Board of Tree Experts. Licensed Tree Experts can perform tree expert services which means and include tree pruning, repairing, brush cutting or removal, tree removal, stump grinding or removal, tree establishment, fertilization, cabling and bracing, lightning protection, consulting, diagnosis, and treatment of tree problems or diseases, tree management during site planning and development, tree assessment and risk management, and application of pesticides or any other form of tree maintenance.

D. LICENSED TREE EXPERT REPORT - A report prepared by a Licensed Tree Expert containing specific information on the tree(s) to be removed, including, but not limited to species, size, location, condition structure, height, crown integrity, crown spread, age, pruning history, and presence of pests or disease. The report shall include the Licensed Tree Expert's name, address, business affiliation, license number, and signature.

E. CRITICAL ROOT ZONE (CRZ) - The area containing the volume of roots is necessary for the maintenance of tree health and stability. The CRZ is determined as a circle with a diameter calculated from the diameter at breast height (DBH) using the equation (DBH x 1.5) x 2, which typically extends beyond the dripline of the tree (defined below).

F. DBH (DIAMETER AT BREAST HEIGHT) - A standard measurement of tree size is taken by measuring the diameter of the trunk at a height of 4.5 feet above ground level. Guidelines for determining DBH in some of the more complicated situations are as follows:

1. If the tree has branches, bumps, or forks that interfere with DBH measurement, measure below that point and record the height at which DBH was determined.

2. If the tree is growing vertically on a slope, measure DBH from the uphill side of the slope.

3. If the tree is leaning, measure DBH in the direction of the lean.

4. If the tree splits into several trunks close to the ground (i.e., has a multistemmed or low-branched habit), the DBH of the tree is the sum of the DBH of each trunk.

G. DOWNED TREE - A tree that has fallen over or is broken and is lying on the ground or a structure.

H. DRIPLINE - The outermost limit of the canopy of a tree is delineated by the perimeter of its branches which, extended perpendicularly to the ground, encloses the tree.

I. GIRDLING - An activity or circumstance that removes or injures the bark of a tree trunk, typically extending around much of the tree's circumference.

J. HAZARDOUS TREE - A tree that exhibits serious defects is a visible sign that the tree is failing and that it presents an imminent threat to the health and safety of persons, property, power lines, or places where people gather. Examples of serious defects include, but are not restricted to, one or more of the following conditions:

1. Excessive damage by an act of God, usually a weather event such as a windstorm, lightning strike, or flooding, with major broken branches, split trunks, large cracks, or other defects that cannot be corrected by pruning.

2. Severe cracks in the main stem or in branch unions that penetrate deeply into the wood of the tree.

3. Advanced decay is associated with cracks, branch unions, cavities in the tree or root flares, and buttress roots. Evidence of fungal activity, including mushrooms, conks, and brackets growing on root flares, stems, or branches, can be indicators of advanced decay.

4. Leaning beyond 45° from vertical with evidence of recent root exposure, soil movement, or soil mounding.

5. Supported solely by the action of another tree or object.

K. LANDSCAPE PLAN - A drawing of the subject property showing the locations, quantities, species, varieties, and sizes of trees to be planted. The plan may also include the locations of existing trees and other landscape features.

L. PREFERRED SPECIES LIST - A list of tree species for various sites and conditions, including such characteristics as "under wires," "native," and "urban/street tree," maintained by the TPC.

M. PROTECTED TREE - Any of the following:

1. A tree with a DBH of eight inches or more, regardless of location.

2. A tree with a DBH of three inches or more is in a wetland, watercourse buffer, or watershed buffer.

3. A tree with a DBH of three inches or more is located on a steep slope.

4. A tree that has been planted as a specific requirement of site development plan approval or as part of a previous replanting or restoration agreement.

5. A tree with a DBH of three inches or more is designated by the New Jersey State Department of Environmental Protection as a protected native plant for our region.

N. PUBLIC PROTECTED TREE - Any of the following:

1. A tree with a DBH of eight inches or more located on lands owned by the Borough or land upon which easements are imposed for the benefit of the Borough.

2. A tree, regardless of size, is planted in a designated tree well or curbside in the public right-of-way.

O. REPLANTING AGREEMENT - A written agreement between the property owner and the TPC specifying types and sizes of trees to be planted as replacements for those that have been removed.

P. RESTORATION AGREEMENT - A written agreement between the property owner and the TPC specifying types and sizes of trees to be planted as replacements for those that have been removed in violation of this chapter.

Q. TPC APPLICATION - A completed form entitled "tree removal permit application," available from the Borough Clerk or the Borough website is to be submitted by any party wishing to remove one or more protected trees as outlined herein.

R. TREE PRESERVATION COMMISSION (TPC) - A committee constituted by the Borough Governing Body, composed of volunteers with appropriate expertise to evaluate TPC applications per the Little Silver Tree Preservation Code and to provide such expertise to the Governing Body, Planning Board, or any other Borough officials as requested.

S. TREE REMOVAL PERMIT - A permit approved by the TPC and duly issued by the Borough Clerk or designee according to the terms of this chapter. The permit consists of a written letter acknowledging which trees have been approved for removal and is accompanied by a permit sign to be posted publicly. The permit may also include additional compliance requirements such as a replanting agreement or landscape plan.

T. TREE RISK ASSESSMENT - A determination of the extent to which a tree is hazardous. Risk is rated by evaluating the probability of failure of the tree, its size, and the targets that could be damaged if it fails.

§ 27-2. REGULATION OF TREE REMOVAL IN OTHER PARTS OF THIS CODE

The provisions of this chapter shall not apply to those trees which are known as "shade trees" as defined by Chapter 15 of this Code.

§ 27-3 TREE PRESERVATION COMMISSION

A. The Governing Body hereby creates a Tree Preservation Commission (the "TPC"), which shall consist of no fewer than five members to be appointed by the Council for two-year terms, and no more than three such terms shall expire in any single year. TPC members shall be Borough residents and shall have general knowledge of trees and their planting and maintenance. TPC members shall receive no compensation for their services. A chairperson shall be selected by the TPC and approved by the Governing Body. A Liaison to the Governing Body will be appointed. A member of the DPW department will serve.

B. Responsibilities and duties of the TPC shall include:

1. Site visits to evaluate the conditions of trees subject to TPC applications.

2. Permit approval or disapproval based on its findings.

3. Specification of replanting or restoration agreements.

4. Review and documentation of violation conditions.

5. Participation in the appeal process as outlined herein.

6. Education of Borough residents about tree preservation, tree risk assessment, appropriate tree choices for given site conditions, and any other aspects of tree stewardship.

7. Advising Borough boards, committees, or departments on tree-related matters.

8. Reviewing site development plans or environmental impact statements upon request by the Planning Board.
9. Consulting with the DPW regarding utility street tree issues.

C. The TPC shall meet monthly or as often as necessary in a public meeting to conduct pertinent business and shall act promptly on applications and appeals. All procedural determinations and decisions made by the TPC shall be by a majority vote; in an emergency, determinations can be made by the chairperson. Determinations of the TPC shall be final, except that they shall be subject to an appeal process, as provided herein.

D. The TPC is authorized and empowered to obtain the advice of persons qualified because of professional training in the growing and maintaining of trees upon prior approval of anticipated costs by the Borough Administrator.

§ 27-4. ALLOWABLE ACTIVITIES. A tree removal permit is not required for:

A. Removal of any tree not regulated by this chapter.

B. Removal of a downed tree.

C. Routine pruning or trimming of a tree to maintain health and natural habitat.

§ 27-5 ACTS REQUIRING PERMIT

A. No person, firm, or corporation shall purposely, carelessly, or negligently cut down any protected tree or take any action that will result in the cutting down of any protected tree unless a tree removal permit is obtained, as provided in this chapter.

B. Notwithstanding any other provision of this chapter, where protected tree removal is proposed in connection with any site plan or subdivision application submitted to the TPC for review and the Planning Board for approval, protected trees may be removed from the affected property only in conjunction with and after the approval by the Planning Board of a final subdivision plat or final site development plan.

§ 27-6 GRANTING OF TREE REMOVAL PERMITS

A. Permits for the removal of protected trees may be granted under the following circumstances:

1. The protected trees are in severe decline, diseased, or damaged such that they cannot, or should not, be saved.

2. The removal of the protected trees is otherwise necessary due to their health or physical condition, according to good and accepted arboricultural practices. To this effect, a written statement describing the condition of the tree from a Licensed Tree Expert is required as part of the permit application, unless explicitly waived by the TPC.

3. The protected trees present an unacceptable risk to the person or property of the owner, to the public, to public property, or the person or property of an adjoining property owner. A tree risk assessment should be performed and documented by a Licensed Tree Expert. Circumstances must be such that defects cannot be remedied by reasonable pruning or cabling of the tree.

4. The protected trees are healthy but cause undue hardship by substantially interfering with the permitted and intended use of the property. No report from a Licensed Tree Expert is required for a healthy tree. However, the applicant should supply a description of the intended use and why the protected trees present an undue hardship.

B. Replanting agreements: The TPC, as a condition of granting a tree removal permit, shall require the applicant to replace any protected tree that is the subject of the application with one or more new tree(s), per tree valuation criteria. The replanting agreement must be signed by the homeowner before a permit is issued. A replanting agreement shall also be required if a cumulative total of five (5) or more tree removals are requested for a single property within a twelve-month period. The replanting agreement shall be subject to the Tree Replacement Requirements Table Below.

1. The replanting agreement shall require the planting of one or more replacement trees on the property in keeping with the Tree Replacement Requirements Table.

2. When on-site restoration is determined by the TPC to be impractical or undesirable, an equivalent monetary value amount shall be paid into

the Borough Tree Fund Trust Account in keeping with the Tree Replacement Requirements Table

3. Tree Replacement Requirements Table

Number of Trees to be removed	Size Diameter (Inches)	Number of Trees Replacement Trees	Size of Replacement Trees	Or Dollar Amount per Tree
1	Greater Than 8 up to 10	1	2 to 2 1/2	$240
2	Greater Than 8 up to 10	1	3 1/2 to 4	$420
1	Greater Than 10 up to 16	2	2 to 2 1/2	$480
1	Greater Than 16 up to 23	2	3	$840
1	Greater Than 23 up to 30	4	3 1/2 to 4	$1,680
1	Greater Than 30	5	3 1/2 to 4	$2,100

4. To assist the TPC in determining the elements of the replanting agreement, the services and reporting of a Licensed Tree Expert or horticultural consultant may be required. Fees for consultant services will be the responsibility of, and billed to, the applicant.

5. Replanting shall be completed within six months of execution of the replanting or restoration agreement. The applicant shall contact the Borough Clerk within 10 business days after restoration work has been fully completed so that a final site inspection can be carried out. If seasonal planting requirements prevent the timely completion of restoration, the timeline may be extended by the TPC or the Building Inspector.

6. No certificate of occupancy for new construction shall be issued by the Building Inspector until the replanting work is completed to the reasonable satisfaction of the Building Inspector, subject to conditions as they shall prescribe.

7. If trees included in the replanting or restoration agreement fail to survive for two calendar years following planting, they shall be replaced by the property owner with identically specified plants unless a modification of the agreement is obtained via TPC review and approval. Said replacement shall be within 60 days following written demand from the TPC for such replacement, or within an extended period as may be specified. Should the property owner fail to replace the trees pursuant to demand within the required period, they may be subject to penalties as outlined in this chapter.

§ 27-7 PROCEDURAL REQUIREMENTS FOR TREE REMOVAL PERMITS

A. TPC applications must be made, in writing, according to rules and regulations set forth by the Borough Clerk's office. The permit fee shall be as set from time to time by the Governing Body and must be paid upon submission of the application.

B. Where the removal of three or more trees is planned, a landscape plan indicating the species and location of replacement plantings must also be attached to the application.

C. Applications for tree removal permits shall be referred by the Borough Clerk to the TPC, which shall review and decide the applications within 45 days of receiving all required information. Failure of the TPC to respond by the end of the review period results in automatic approval and permit issuance.

D. The application for a permit gives implicit permission for members of the TPC to enter onto the applicant's property to inspect protected trees. No advance notification of inspection visits will be given unless specifically requested by the property owner. Such on-site inspections shall be conducted at a reasonable time of day. TPC members may be accompanied by a Licensed Tree Expert, and photos may be taken for purposes of site documentation.

E. The TPC decision and comments will be provided to the homeowner, in writing, by the Borough Clerk.

F. If the TPC approves the permit, the Borough Clerk will issue both the permit and a permit sign for public posting on the site at a location visible from the street. The sign must be posted at least three business days before tree removal begins. Permits must be available on-site for presentation to TPC members, the Building Inspector, or police upon request while the removal is in progress.

G. Tree removal permits expire six months after the approval date.

H. For the issuance of a tree removal permit, applicants shall pay to the Borough a fee of $25.00.

§ 27-8 EMERGENCY REMOVAL OF PROTECTED TREES

A. The provisions above shall not apply to the removal of a hazardous tree under the following emergency procedure:

1. A TPC application designated as an emergency removal is to be filed with the Borough Clerk, including required fees.

2. A waiting period lasting until the end of the next business day is required before removal action is taken. This waiting period allows time for one or more TPC members to evaluate the tree and communicate their findings to the Borough Clerk. If approved, the Borough Clerk will issue a permit. Failure of the TPC to respond by the end of the waiting period results in automatic approval and issuance of a permit.

3. The waiting period may be waived if a Licensed Tree Expert determines that the tree must be removed immediately for safety reasons, and within five business days, the Borough Clerk is notified, in writing, that an emergency removal action has taken place. Such notification shall be through filing a post facto TPC application, with required fees, containing sufficient documentation of the emergency event, including a statement from a Licensed Tree Expert or other qualified expert and a written explanation of the circumstances and conditions that gave rise to the need for immediate emergency removal, and shall be accompanied by photographic documentation of the tree before and after removal.

B. Removal of a protected tree based on an unreasonable reliance on this emergency procedure, as determined by the TPC, shall be a violation of this chapter.

C. The emergency procedure will be waived:

1. When a tree is determined to be dangerous by a police officer, firefighter, Public Works official, or civil defense official acting in his or her professional capacity during or in the aftermath of catastrophic events or states of emergency.

2. When tree removal is determined to be necessary by Fire Department personnel actively engaged in fighting a fire.

§ 27-9 PROHIBITED ACTIVITIES. No person, firm or corporation shall purposely, carelessly, or negligently take any action that will result in killing, destroying, or significantly degrading the immediate or long-term viability of any protected tree. Such actions include, but are not limited to:

A. Removal of a protected tree without a permit.

B. Girdling or partial girdling or other significant bark damage.

C. Compaction of CRZ due to construction or other activity. Disallowed activity within the CRZ includes traversal, access, or parking by construction vehicles; manual construction activities, excluding landscaping (unless specifically authorized by an approved site development plan); excavation and stockpiling of materials.

D. Installation of impervious surfaces over more than 25% of the root zone.

E. Severing or trenching through more than 25% of the root zone.

F. Grade change exceeding three inches within the CRZ.

G. Poisoning in any manner.

§ 27-10 PUBLIC PROTECTED TREES

A. Public protected trees may be removed only by a Borough department or agency, or by a firm or individual retained or duly authorized by the Borough. Removal of or damage to a publicly protected tree by any other person, firm, or corporation is a violation of this chapter.

B. A TPC application is not required for the Borough to remove a public protected tree, but notification of nearby property owners shall occur before a public protected tree is removed (except in cases of emergency) by posting a sign on the subject tree(s) for at least three business days before removal. Information such as a Licensed Tree Expert report and any test results leading to the Borough department's decision for tree removal shall be made available to Borough residents upon request. Documentation of publicly protected trees that have been removed shall be forwarded to the TPC.

§ 27-11 PENALTIES FOR VIOLATIONS

A. Fines. Any person, firm, or corporation that removes or causes to be removed protected trees without first obtaining the required tree removal permit or who causes irreparable damage to a protected tree according to this chapter, or otherwise violates this chapter, shall be guilty of a violation and, upon conviction, may be subject to fines, including:

1. Mechanical damage to a publicly protected tree, such as knocking over, breaking, or uprooting the tree, bark tearing, limb breakage, tree well damage, or damage to the tree roots caused by a vehicle: up to $500 per violation.

2. Violations affecting a protected tree or public protected tree: up to $500 per violation.

3. Violations affecting a protected tree within a conservation easement, wetland, watercourse, or designated buffer area: up to $1,000 per violation.

4. Other violations of this chapter: up to $2,000 per violation.

5. Fines may be doubled if additional violations occur while an appeal process is pending.

6. Each tree shall be considered a separate violation.

7. Both the property owner, the General Contractor, and the tree removal contractor may be held in violation and fined separately.

B. Restoration agreements. Any person, firm, or corporation that removes or causes to be removed protected trees without first obtaining the required tree removal permit, or who causes irreparable damage to a protected tree according to this chapter, shall be subject to a Restoration agreement.

§ 27-12 TREE VALUATION

A. In the case of non-violation conditions, tree valuation is defined as "equivalent diameter inches," i.e., a twenty-inch DBH tree would be deemed equivalent to up to a twenty-inch caliper of replacement trees. Replacement trees are suggested by the TPC based on the preferred species list. The numbers, sizes, and types of trees required for replacement will be specific to each situation.

B. In the case of violation conditions, the tree valuation calculation may include a dollar value estimate for trees that were too large to be replaced directly. This is achieved using the industry standard "trunk method" formula written by the Council of Tree and Landscape Appraisers. This formula considers four key factors: size, species, condition, and location.

§ 27-13 APPEALS

Any person or entity that is the subject of any decision under this chapter may appeal such a decision by notifying the Borough Clerk and scheduling a meeting with the TPC. If the issues cannot be resolved, a further appeal can be made to the Governing Body by giving written notice of such appeal to the Borough Clerk. The decision of the Governing Body on any such appeal shall be deemed to be the final decision of the Borough of Little Silver.

§ 27-14 ENFORCEMENT OF ORDINANCE

Enforcement of this ordinance shall be undertaken either by the Borough Code Enforcement Officer or a designated member of the Borough's Department of Public Works.

SECTION 2. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed. All portions of the ordinance not modified herein remain in full force and effect.

SECTION 3. Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION 4. This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.

Council	Motion	2nd	Ayes	Nays	Abstain	Absent
Councilwoman Brannagan			X			
Councilman Brennan			X			
Councilman Christensen			X			
Councilman Faherty			X			
Councilman Galante	X		X			
Councilman Smith		X	X			
Mayor Neff						
		VOTE	6	0		

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ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF LITTLE SILVER, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY TO ADD A NEW CHAPTER 27 ENTITLED "TREE PROTECTION AND REPLACEMENT"

(Advertised in the Two River Times, April 11, 2024)

Introduced: April 8, 2024

Public Hearing April 22, 2024 7pm

I, Kevin J. Burke, Jr. Borough Administrator/Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #879-24, that passed by affirmative vote after the first reading at a meeting of the Borough Council held on April 8, 2024 of the Borough of Little Silver.

Kevin J. Burke, Jr.
Borough Administrator/Borough Clerk