

**TOWNSHIP OF MAHWAH  
ORDINANCE NO. 2033**

**ORDINANCE OF THE TOWNSHIP OF MAHWAH, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING CHAPTER 14, TREE PRESERVATION, OF THE TOWNSHIP CODE TO REVISE REQUIREMENTS AND CONFORM WITH THE NJDEP MODEL TREE REMOVAL AND REPLACEMENT ORDINANCE**

**WHEREAS**, the New Jersey Department of Environmental Protection (“NJDEP”) released a model Tree Removal and Replacement Ordinance as part of the requirements for Tier A MS4 permit renewals; and

**WHEREAS**, the Township of Mahwah Ordinance Committee has reviewed Chapter 14, Tree Preservation, of the Township Code, which Chapter governs tree removal and replacement in the Township; and

**WHEREAS**, as part of its review, the Ordinance Committee has solicited input from Administration, the Township Engineer, and the Environmental Commission; and

**WHEREAS**, the Township Engineer has proposed revisions to Chapter 14 to encourage tree preservation and to achieve conformance with NJDEP requirements.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of Mahwah, County of Bergen, and State of New Jersey, as follows:

**SECTION 1.** Chapter 14, Tree Preservation, is hereby repealed and replaced to read as follows in its entirety:

**Chapter 14 Tree Preservation, Removal and Replacement**

**Editor's Note: Prior ordinance history includes portions of Ordinance Nos. 958 and 1232.**

**§ 14-1 PURPOSE.**

The purposes of this Chapter are: (a) to control and regulate indiscriminate and excessive removal, cutting and destruction of trees in order to, regulate and prevent conditions which cause increased surface drainage, sedimentation and soil erosion, cause decreased soil fertility and impair the stability and value of real estate, all of which conditions are, and will in the future, be a detriment to public safety, health and welfare and (b) to preserve an important attribute of the Township, by encouraging owners of existing developed lands and developers of lands to save or replace as many native tree species and other mature trees as possible when making improvements to real property and (c) to encourage the planting and maintenance of shade trees to enhance the attractiveness of roadways and neighborhoods within the Township.

**§ 14-2 DEFINITIONS.**

As used in this Chapter, the following terms shall have the meanings indicated.

**APPLICANT**

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

**CRITICAL ROOT RADIUS**

Shall mean the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6” DBH would have a CRR = 6”x1.5’ = 9’.

**DIAMETER AT BREAST HEIGHT (DBH)**

Shall mean the diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

**HAZARD TREE**

Shall mean 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.

At the discretion of the Township, Applicants for removal of Hazard Trees may be required to provide a certification from a Licensed Tree Expert (LTE) that the trees in question meet the definition of a Hazard Tree as per this Ordinance. The Township reserves the right to have an Arborist of the Township review the Applicant’s Application and Certification.

- a. Has an infectious disease or insect infestation;
- b. Is dead or dying;
- c. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
- d. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or
- e. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or LTE.

**PARK TREE**

Shall mean trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all other areas owned by the Township of Mahwah, or to which the public has free access as a park.

**PERSON**

Shall mean any individual, resident, corporation, utility, company, partnership, firm, or association.

**PLANTING STRIP**

Shall mean 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.

**REPLACEMENT TREE**

Shall mean a tree to be planted as a replacement for the removal of a tree as described in Section 14-4 of this Chapter. The Township shall develop and maintain a list of desirable replacement trees.

**RESIDENT**

Shall mean 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.

**SHADE TREE**

Shall mean a tree planted along all public roads within or adjoining the municipal right-of-way. The Township shall develop and maintain a list of shade trees desirable for planting as: a small shade tree which is a type of tree with a mature height under 25 feet; a medium shade tree which is a type of tree with a mature height between 25 feet and 30 feet; and a large shade tree which is a type of tree with a mature height over 35 feet. Also see STREET TREE definition below.

**STREET TREE**

Shall mean trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the Township of Mahwah.

**TREE**

Shall mean any woody perennial plant having a diameter or width greater than 12 inches and/or a circumference greater than 38 inches measured at ground level. If a plant has multiple stems, then the aggregate of the stem diameters and/or the aggregate of the circumferences shall be used in determining whether the plant is a "tree."

**TREE CALIPER**

Shall mean the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

**TREE REMOVAL**

Shall mean 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.

**§ 14-3 PROHIBITED ACTIVITIES.**

Except as permitted by Sections 14-4 and 14-5 of this Chapter, no person, firm, corporation or individual shall do or cause to be done by others, either purposely, carelessly or negligently, any of the following acts upon privately owned property within the Township of Mahwah.

- a. Cut, destroy, remove, or substantially injure any tree.
- b. Place or maintain upon the ground any substance which would impede the free access of air and water to the roots of any tree.
- c. Apply any substance to any part of a tree, including roots, with the intention to injure or destroy the tree.

**§ 14-4 PERMITTED ACTIVITIES.**

Notwithstanding the restrictions contained in Section 14-3 of this Chapter, the following activities shall be permitted.

- a. The cutting, pruning or trimming of trees in a manner which is not harmful to the health of the tree.
- b. The cutting, destruction or removal of trees which are diseased or dead or which endanger public safety.
- c. For Single Family Residential Properties, the cutting or removal of not more than two (2) trees per lot during any calendar year (for example, if the Applicant removed 2 trees in July, 2024, the "count" resets to zero on January 1, 2025). This exemption does not include trees which are indicated as trees to remain on a plan previously approved by a land use board of the Township of Mahwah, when indicated as such as a Condition of Approval in the Board's Resolution of Approval.

For Multi-Family Residential and Commercial Properties, the cutting or removal of not more than two (2) trees per Acre during any calendar year. This exemption does not include trees which are indicated as trees to remain on a plan previously approved by a land use board of the Township of Mahwah, when indicated as such as a Condition of Approval in the Board's Resolution of Approval. Any fraction of a tree permitted to be removed is rounded down to the nearest whole number (For example, a property 2.8 acres in size is permitted to remove 5.6 trees per year. This would be rounded down to 5 trees per year).

- d. The cutting, removal or destruction of trees in accordance with a plan approved by the

Land Use Department as part of a Soil Movement Permit Application or a plan approved by the Planning Board or Board of Adjustment in conjunction with a development application or soil movement permit application so long as the approval includes a requirement that the applicant provide replacement trees in accordance with the Tree Replacement Requirement Table noted in Section 14-9 of this Ordinance.

- e. The cutting, removal or destruction shall not commence until all governmental approvals required by the Mahwah Land Use Department, Planning Board or Board of Adjustment have been obtained and a Soil Movement Permit has been issued by the Township.
- f. The cutting, removal or destruction of any tree pursuant to an order or directive of any municipal, County or State Court or agency.

#### § 14-5 EXCLUDED ACTIVITIES.

The provisions of this Chapter shall not apply to the following activities:

- a. Activities involving trees within the public highways, public rights-of-way, or publicly owned properties. Tree removal within the Township's right-of-way must be approved by the Township's Land Use Department, prior to removal, unless performed by the Township.
- b. Tree Farms, commercial logging or timber removal operations on vacant land performed in accordance with a program written by a certified forester.

#### § 14-6 APPEALS.

An applicant may appeal to the Township Council from a decision of the enforcement officer denying a tree removal permit or from any other action or requirement of the enforcement officer under the terms of this chapter. Said appeal shall be made in writing to the Township Clerk within 10 days of the date upon which notice of denial or other action of the enforcement officer is served upon the applicant. The Township Council shall hear the appeal within 30 business days of the filing of the appeal and shall render a decision based on the standards set forth in Section 14-16 shall have the discretion, after interviewing the applicant and the enforcement officer to take the following actions:

- a. Affirm the decision of the enforcement officer.
- b. Overrule the decisions of the enforcement officer and direct that a tree removal permit be issued.
- c. Overrule the decision of the enforcement officer denying the permit but conditioning the issuance of said permit upon the satisfaction of such conditions as the Township Council shall impose.
- d. In special circumstances and upon a showing of good cause by the applicant, waive a

requirement of this Chapter where said waiver will not frustrate the basic intent and purpose of this Chapter.

**§ 14-7 ADMINISTRATION AND ENFORCEMENT.**

- a. The Township's Department of Land Use, as established by Township Code Section 2-12, is hereby designated as the body to administer the provisions of this Chapter.
- b. The Township's Zoning and Property Maintenance Inspector is designated as the enforcement officer for this Chapter.

**§ 14-8 VIOLATIONS AND PENALTY.**

Any person, firm, corporation or individual violating any provision of this Chapter shall upon conviction thereof be punishable by a fine not exceeding \$2,000 per offense and other penalties in accordance Section 1-5 of the Township Code. The party responsible is ultimately the owner of the property. The cutting, destruction or removal of each tree shall constitute a separate offense. Any violators of the Ordinance, in addition to the fine noted above, may be required to provide a replacement plan (Landscape Plan) to restore property to acceptable levels for aesthetics, soil run-off, adjacent property impact and impact on tree canopy for area. The Landscape Plan must be provided by a Certified Landscape Architect in the State of New Jersey. The Mahwah Department of Land Use will provide a deadline of when this plan must be submitted. This plan will be provided to the Environmental Commission for their comment.

The circumference of stumps greater than 24 inches measured ground level will be used to assess penalties on trees removed without approval. Stems of trees that grow out of one root system (i.e. trees with more than one trunk that split below the CMH) will be measured separately to assess tree count.

**§ 14-9 REPLACEMENT TREE REQUIREMENTS.**

The following applies to all replacement trees required under paragraph d of Section 14-4.

- a. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.
- b. Any person, who removes one or more tree(s), as defined as Tree removal, shall be subject to the requirements of the Tree Replacement Requirements Table.
- c. The species type and diversity of replacement trees shall be in accordance with Appendix A.
- d. 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 Township.
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.
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

**Tree Replacement Requirements Table:**

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 2.5" to 17.99" (for street trees) or 12" (for non-street trees) to 17.99"	Replant 1 tree with a minimum tree caliper of 2.5" for each tree removed
2	DBH of 18" to 23.99"	Replant 2 trees with minimum tree calipers of 2.5" for each tree removed
3	DBH of 24" to 29.99"	Replant 3 trees with minimum tree calipers of 2.5" for each tree removed
4	DBH of 30" or greater	Replant 4 trees with minimum tree calipers of 2.5" for each tree removed

e. Tree Replacement Alternatives

1. On-site replacement trees. All required replacement trees shall be planted on the site from which the trees were removed.
2. If the Township determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the Township shall have the option to require the applicant to plant replacement trees of types selected by the Township at an off-site location chosen by the Township's administration. Such off-site locations shall be restricted to Township-owned public property, including but not limited to public parks and public buildings. Discretion to exercise off-site replacements trees shall rest solely with the Township.
3. Township Tree Bank. In the alternative, should the quantity of tree to be removed be greater than the tree replacement/landscaping plan due to limited available planting area and no off-site replacement locations available, the applicant shall make contribution to be deposited in the Township Tree Bank as established by this Chapter. The contribution in lieu of planning shall be \$750 per tree, which is dedicated to tree planting and continued maintenance of the trees. This option is

limited to 50% of the required replacement trees. There shall be a \$35,000 per acre tree replacement cap amount for properties obtaining zoning or site plan approval, which cap shall increase on January 1st of each year thereafter in an amount equivalent to the most recent cost of living increase established by the Social Security Administration.

#### § 14-10 SHADE TREE REQUIREMENTS.

The following requirements apply to all shade trees within the Township.

- a. All new shade trees planted within the Township shall be in good health and planted in accordance with accepted horticultural practices to ensure survival. All new shade trees shall be no less than a caliper of 2-1/2 inches. A shade tree which dies within two years of planting shall be replaced by the person planting the shade tree.
- b. New shade trees shall be spaced no further than 50 feet from each other, except where an obstruction such as a driveway or fire hydrant exists. New shade trees shall be placed no closer than 10 feet from a fire hydrant or driveway, and no closer than 30 feet from a street corner.
- c. The distance that new shade trees are to be planted away from curb, curblines, and sidewalks shall be as follows: small shade trees, no closer than four feet (4'); medium shade trees, no closer than six feet (6'); and large shade trees, eight feet (8') or on the municipal right-of-way easement line, whichever is greater.
- d. Where new shade trees are required under overhead public utility lines, excluding service lines, only small shade trees shall be planted. New medium and large shade trees may be planted near overhead public utility lines as long as the trunk of the medium or large shade tree is no closer than 15 feet of the vertical plane of any existing utility line. In all other locations requiring the placement of new shade trees, medium and large shade trees shall be planted.
- e. Subject to the prohibited activities described in Section 14-3 of this Chapter, owners of property on which shade trees have been planted shall be responsible for the care of such shade trees.
- f. The Township reserves the right to plant, prune, maintain and remove shade trees as may be necessary to ensure public health, or enhance the symmetry and beauty of the roads within the Township.
- g. In accordance with any applicable franchise agreements, a public utility company may selectively trim shade trees to maintain the integrity of its utility lines but only to the extent necessary and in accordance with accepted aesthetic and horticultural standards.

#### § 14-11 GUIDELINES.



The Township of Mahwah's Department of Land Use shall utilize the following guidelines when implementing this Chapter.

- a. The replacement trees must be of the type found in the mature forest of the northern New Jersey/southern New York area such as oak, maple, hickory or other hardwoods. It is the Township's intent that the replacement trees be these tree types but the Land Use Department may seek the advice of the Township's Environmental Commission with respect to alternative tree types when submitted for individual properties.
- b. The replacement trees shall be planted within the landscaping plan for the entire property and not solely used for shielding and buffering along property boundaries. The replacement trees shall be of sufficient caliper and health, and planting should ensure an established root system and growth.
- c. Trees identified by a property developer and verified by the Township's Department of Land Use as candidates for preservation shall be protected from damage during construction in accordance with the Township's Soil Movement Ordinance and the developer shall use all other necessary and appropriate tree preservation methods. Extreme care should be taken by the developer, its engineers, architects and contractor, in specifically protecting the root zone of preserved trees during all construction on the property.
- d. Prior to the removal of any trees, as per this Ordinance, a pre-Tree Removal Inspection is to be performed by the Township's Department of Land Use. At a minimum, those required to attend this meeting are a representative of the property owner, a representative of the tree removal company and a representative of the Township's Department of Land Use.

It is the Applicant's responsibility to have the trees to be removed clearly delineated in field prior to the required Inspection.

#### **§ 14-12 FORMS.**

All applications for development and all soil movement permit applications shall include a Tree Preservation Removal and Replacement Application Form provided by the Department of Land Use. The Department may solicit the advice from the Township's Environmental Commission on the details of the Application form.

#### **§ 14-13 STREET TREES SPECIES TO BE PLANTED.**

The Township's Environmental Commission shall develop and maintain a list of desirable trees for planting along streets in three size classes based on mature height: small, under 25 feet; medium, between 25 and 30 feet; large, over 35 feet and provide this list to the Department of Land Use.

**§ 14-14 PUBLIC TREE CARE.**

The Township of Mahwah shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the right-of-way, alleys, avenues, lanes, squares, easements, rights-of-way, and public grounds, as may be necessary, to ensure public safety, for any public purpose, or to preserve, or enhance, the symmetry and beauty of such public grounds or areas.

**§ 14-15 APPLICATION REQUIRED; FEES; ESCROW**

Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2.5” or more, or any non-street tree with DBH of 6” or more, on their property shall submit a Tree Preservation, Removal and Replacement Application to the Department of Land Use. No tree shall be removed until the Township has reviewed and approved the removal. The following Application, Escrow and Tree Bank Contribution fees are required to accompany any Application:

<b>Tree Removal Category</b>	<b>Application Fee</b>	<b>Escrow Fee</b>
Exempt	\$50	\$100
Board application and/or removal of more than 5 trees	\$100	\$250
Removal of 6 to 10 trees	\$150	\$350
Removal of 11 or more trees	\$200	\$500

**§ 14-16 APPLICATION REVIEW; DECISION; TIME REQUIREMENTS; EXPIRATION**

- a. The enforcement officer shall accept for filing the permit application referenced in section 14-15 above. Said application shall be dated and time stamped when received. Thereafter, the enforcement officer shall within 15 business days of receipt of the completed application:
  1. Visit and inspect the location and inspect the land and trees that are the subject of the application;
  2. If necessary, meet with the applicant to discuss the application; and
  3. Grant or deny the requested permit in whole or in part, or make recommendations that would make the application acceptable to the enforcement officer, in writing and in accordance with the following considerations:

- (a) Whether the removal or destruction of the tree or trees will cause or contribute to physical or environmental problems on the land and other property, including but not limited to flooding, soil instability and erosion.
  - (b) Whether the destruction or removal of the tree or trees will have a negative impact on the contiguous canopy or on the growth and development of the remaining trees on the land and other property.
  - (c) Whether the destruction or removal of the tree or trees will have a negative aesthetic or visual impact on the land and other property.
  - (d) Whether the destruction or removal of the tree or trees will threaten or otherwise lead to a loss of wildlife habitat or tree species.
  - (e) Whether the tree or trees are specimen or significant tree(s) as defined in this Chapter.
  - (f) Whether the destruction or removal of the tree or trees [is proposed to take place in an area identified by] is under the jurisdiction of a New Jersey or Federal agency, including but not limited to the New Jersey Department of Environmental Protection [as a riparian buffer zone].
  - (g) Whether the destruction or removal of the tree or trees is a part of an overall landscape plan for the property.
  - (h) Whether a denial of the permit, in whole or part, would cause an undue hardship on the applicant.
  - (i) Whether the [application includes a] applicant's tree replacement plan [which] will mitigate the negative impact that the tree removal or destruction will have on the land and other property.
4. A decision other than one to grant the requested permit in its entirety shall include the enforcement officer's written findings and reasons for said decision.
  5. The failure of the enforcement officer to grant or deny the application for a permit for the removal or destruction of a tree or trees within the 15-day-business-day period shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the 15-day-business-day period has been agreed upon between the applicant and the enforcement officer in writing before the period expires.
  6. The removal of trees and any tree replacement plan are to be implemented within one year from issuance of the permit. A permit shall expire and shall no longer be in effect twelve months after the date said permit was first granted, unless an extension

of the twelve-month period has been agreed upon between the permittee and the enforcement officer in writing before the period expires.

7. Permits shall not be transferrable.

**§ 14-17 VENDOR REGISTRATION**

- a. Owners of single-family dwellings performing work on their own property shall not be required to register with the Township.
- b. Tree removal and/or tree maintenance entities performing work within Mahwah shall register annually with the Township's Department of Land Use.
- c. The entity shall complete a form provided by the Mahwah Department of Land Use, present a valid New Jersey business license, carry minimum general liability coverage of \$250,000, carry worker's compensation coverage, and sign a statement that they have read, understood, and will abide by the Township Code.
- d. Registrants shall pay an annual fee of \$50.
- e. The Township will provide a list of all registered vendors on the Department of Land Use website.

**§ 14-18 MAHWAH TREE BANK**

- a. There shall be established a Mahwah Tree Bank for the purposes set forth in this Chapter.
- b. All funds collected in lieu of replanting trees under Section **14-9** shall be made out to the "Mahwah Tree Bank" and deposited into an escrow account clearly designated as the "Mahwah Tree Bank." Funds so deposited shall be used solely for the following purposes:
  1. Open space acquisition.
  2. Tree planning on public property.
  3. Tree management and/or removal.
  4. Equipment supporting growth of vegetation and/or trees.
  5. Costs associated with arborist or CTE performing periodic review of trees located within the public rights-of-way or upon public property.
- c. The Mahwah Tree Bank shall be administered by the Chief Financial Officer, who shall report (listing by date for the report period) to the Township Council, the Planning Board and the Environmental Commission, on a semiannual basis, the amount in the Bank as of the end of each quarter, the amount deposited by each development application or other

contribution, and all amounts dedicated from the Bank for use for the purposes described in this Chapter for that period. Such reports shall be filed with the Township Clerk.

- d. Any an all appropriations for the Mahwah Tree Bank shall be made by the Township Council upon recommendation of the Administration.

**SECTION 2.** All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

**SECTION 3.** In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

**SECTION 4.** This ordinance shall take effect twenty (20) days following final passage, approval, and publication as required by law.

Introduced: June 10, 2024  
Adopted: June 24, 2024  
Effective Date: July 15, 2024


TOWNSHIP OF MAHWAH



---

Robert M. Ferguson, III Council President

ATTEST:



---

Carolyn George, RMC  
Municipal Clerk