

**TOWNSHIP OF MILLBURN-
ORDINANCE NO. 2671-24
AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF
THE TOWNSHIP OF MILLBURN, CHAPTER 11 "TREE PRESERVATION"**

STATEMENT OF PURPOSE: *the purpose of this Ordinance is to make permanent changes to the Township's Tree Preservation code. The Tree Preservation Code, including various fees and definitions, has not been updated since 2015. The following revisions will reflect the increase in tree prices, fees for tree removal, a desire to protect trees on construction sites and establish a registration process for tree removal companies to ensure quality tree work in the Township. In addition, several definitions have been added to the Tree Preservation ordinance to further guide residents and tree companies doing tree related work or general construction in the Township.*

WHEREAS, the Township Committee of the Township of Millburn wishes to update its Tree Preservation ordinance which has not been done since 2015; and

WHEREAS, the proper preservation of both private and Township trees enhances the environment, character and aesthetic of the Township of Millburn; and

WHEREAS, periodic updates to fees, definitions, process and procedures is necessary for the effective management of Township's urban forestry; and

WHEREAS, the following changes will create a stronger and more current Tree Preservation ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Millburn in the County of Essex and State of New Jersey as follows:

Section 1. Article 11 "Tree Preservation", is hereby amended and supplemented by adding new text as underlined below

Section 2. Article 11 "Tree Preservation", is hereby amended by deleting text as indicated by ~~striketrough~~ below

Section 3. All other subsection of Article 11 "Tree Preservation" will remain unchanged as indicated without any underlining or strikethroughs present.

11-1. INTENT AND PURPOSE.

- a. Indiscriminate, uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land within the Township of Millburn will cause increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effect and increased dust and pollution. The singular or cumulative affect of any of the foregoing could adversely impact the character of Millburn Township, decrease property values, render the land unfit and unsuitable for its most appropriate use, and negatively affect the health, safety and general welfare of Millburn's residents. Thus, the Township governing body desires to regulate and control indiscriminate and excessive cutting of trees within the Township and to require appropriate tree replacement.
- b. It is recognized that there is a strong interrelationship between the integrity of the Township's water resources, development on steep slopes, tree removal, soil disturbance, stormwater management and the general use of the land resources. Fewer trees throughout the Township also correlates with increased air pollution. Therefore, the governing body finds that the appropriate management of these resources is an important health, safety and general welfare concern. Managing the Township's tree resources is consistent with the State-approved community forestry management plan, as in P.L. 1996, c. 135.¹ The appropriate management guidelines for tree preservation to be utilized are:
 1. The American National Standard, ANSI A300;
 2. Trees and Development: A Technical Guide to Preservation of Trees During Land Development, Nelda Matheny and James R. Clark; and
 3. Penn State Guide to Tree Preservation During Construction.
- c. Trees are declared to be an important cultural, ecological, scenic and economic resource. Proper management of this resource will ensure its maintenance and result in economic returns. A forestry management program is intended to meet the objectives of preserving, protecting, enhancing and maintaining trees and providing opportunities for the continued use of forest resources which are compatible with the maintenance of the environment. This will be accomplished by ensuring management of forest and trees through the application of sound management practices. To that end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees covered by this chapter, except in accordance with the provisions of this chapter.
- d. The enforcement of this chapter shall be the duty of the Enforcement officer, which shall mean the Forester of the Township of Millburn or his/her duly authorized representative.

11-2. DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

BOUNDARY TREE — A tree that is on the property line between to two or more properties. Where the root flare of a tree on the property line extends onto one or more properties that A tree that may be considered a “shared tree” and belongs to all the property based on percentage of trunk mass on each property.

CALIPER — "Caliper" is a type of diameter measurement used in the nursery industry. The height measurement shall be taken from ground level for field-grown stock and from the soil line for container-grown stock, which should be at or near the top of the root flare. Caliper measurement of the trunk shall be taken six (6") inches above the top of root flare up to and including four-inch caliper size. If the caliper at

six (6") inches above the ground exceeds four (4") inches, the caliper should be measured at twelve (12") inches above the top of root flare. Seldom are tree trunks perfectly round.

1. Editor's Note: See N.J.S.A. 13:1L-17.1 et seq.

The most accurate measurement will result from the use of a diameter tape. Caliper measurements taken with manual or electronic slot or pincer type caliper tools should be the average of the smallest and largest measurements.

DIAMETER BREAST HEIGHT (DBH) — The diameter of a tree measured four (4') feet above the uphill/ highest side.

DRIPLINE — Shall mean the circular area surrounding a tree, the radius of which area shall be the distance from the trunk of the tree to the outermost branch of the tree.

ENFORCEMENT OFFICER — Shall mean the Forester of the Township of Millburn or his/her duly authorized representatives.

EROSION — Shall mean the detachment and movement of soil or rock fragments by water, ice, wind and gravity. Erosion is a process in which soil, rocks, sediment are worn away and transported by natural forces such as wind or water. The material washed away ends up in rivers, streams and lakes along with any chemical pollutants applied to the soil and may clog their flow and increase flooding. Trees and groundcover help prevent erosion.

HEAT ISLAND— Heat islands are urbanized areas that experience higher temperatures than outlying areas. Structures such as buildings, roads, and other infrastructure absorb and re-emit the sun's heat more than natural landscapes such as forests and water bodies. Urban areas, where these structures are highly concentrated and greenery is limited, become "islands" of higher temperatures relative to outlying areas.

HISTORIC TREE — Shall mean a tree that has been determined to be at least one hundred (100) years old and of notable historic interest to Millburn Township because of its age, type, size or historic association and which has been so designated by ordinance and/or resolution of the Township Committee, as appropriate.

LANDMARK TREE — A landmark tree is any rare species, or a tree of notable location, shade value, aesthetic value, scenic enhancement or erosion control function and can be shown on a township map.

MILLBURN TREE RESTORATION PLAN — Shall mean a plan of tree removal, preservation, and planting prepared by a New Jersey Licensed Tree Expert or Licensed Landscape Architect.

NO NET LOSS— A goal for a development project, policy, plan or activity in which the impacts on the biodiversity of our tree resource are balanced or outweighed by measures taken to avoid and/or minimize the impacts, to restore affected areas and finally to offset the residual impacts, so that no loss remains. There should be no reduction in the number of trees or the tree canopy in the township over time.

PERMIT — Shall mean a license issued by the Township Forester to remove or destroy a tree.

REPLACEMENT TREE— Shall mean, in the case of a deciduous tree, a tree which measures at least [no smaller than] two [to two]and one-half inches in caliper, and in the case of an evergreen tree, a tree which measures at least six feet in height measured from grade. In all cases, the replacement tree shall be outlined on the required tree restoration plan and be approved at the Foresters discretion. Replacement nursery stock shall adhere to the American Standard for Nursery Stock (ANSI Z60.1)

ROOT SYSTEM — Shall mean tree roots within the dripline perimeter.

SHADE TREE ADVISORY BOARD — Shall mean the advisory committee established by Chapter 2, Article V, § 2-33 of this Code.

SHRUB— A shrub is a small to medium sized woody plant with multiple stems.

SPECIMEN TREE — Shall mean any tree in fair or better condition which is so designated by ordinance and/or resolution of the Township Committee, as appropriate, based on considerations of whether the tree is a rare species or specimen thereof; is abnormal in height, trunk diameter or dripline circumference for a tree of its species; has foliage of an unusual quality for a tree of its species; occupies a location which confers special shade tree, fragrance, erosion control, aesthetic, scenic enhancement, historic, preservation or cultural values to the community. For purposes of this definition, "in fair or better condition" shall mean that a tree has a relatively sound and solid trunk with no evidence of extensive decay or visual evidence of being hollow and with no major insect or pathological problems.

SUPERINTENDENT OF THE DEPARTMENT OF PUBLIC WORKS — Shall mean that individual appointed by the Business Administrator with the consent of the Township Committee having direct charge and management of the maintenance and/or repair of all streets, sewers, drainage, shade trees, parks and other like operations performed by the Township.

TREE PIT — A tree pit is the underground area for tree roots and the surface treatment for pedestrian safety and irrigation. A tree pit should be as large as possible within the confines of the pedestrian sidewalk, ideally with a minimum area of thirty square feet horizontally and as deep as the root ball of the tree. The tree pit should be mulched and protected from compaction.

TOWNSHIP ENGINEER — Shall mean the qualified professional engineer and certified municipal engineer licensed by the State of New Jersey and appointed by the Township Committee to oversee planning, construction, and maintenance of public improvements and other matters of similar character.

TOWNSHIP FORESTER — Shall mean that person appointed by the Township to supervise and insure the conservation, protection and care of trees, shrubs and soil within the Township and having the scope of duties and authority provided for in this Chapter and shall also include those persons working under the Township Forester's supervision or authorized to carry out the duties and obligations assigned to the Township Forester.

TOWNSHIP TREE — Shall mean a tree located on land owned by the Township or other municipal body or which is located on a street, highway, right-of-way or parkway.

TREE — Shall mean any woody perennial plant having a diameter greater than ten (10") inches measured at a point four (4') feet above the ground.

TREE PROTECTION ZONE — Shall mean the area within the “drip line” of a tree, as that term is defined in section 11-2 above.

TREE REMOVAL APPLICANTS — Shall refer to any person or organization seeking to remove or alter trees in the Township.

TREE REMOVAL PERMIT — Shall mean the permit issued by the Forester or its designee to remove or destroy a tree or to place machinery, material or temporary soil deposit or regrade soil within the dripline of any tree.

11-3. APPLICABILITY.

The terms and provisions of this Chapter shall apply as follows:

- a. Unless specifically excepted in Section 11-8 10 below, no person shall cut or remove, or cause or permit to be cut or removed, any tree on any land within the Township or place any machinery, material or temporary soil deposit or regrade the soil within the dripline of any tree unless the person shall have first obtained a permit therefor in accordance with the regulations and provisions of this Chapter.
- b. Specimen and historic trees.
 1. Trees which have been designated as specimen or historic under the provisions of this Chapter shall be maintained in a living condition, and it shall be unlawful for any person to cut or remove such tree or place any machinery, material or temporary soil deposit or regrade the soil within the dripline of such tree without an approved tree removal permit. No specimen or historic tree shall be cut or removed, and none of the activities set forth in this paragraph shall be undertaken, unless the applicant has obtained the approval of the Enforcement Officer.
 2. The condition of trees proposed to be saved shall be evaluated by use of guides including, but not limited to, the following:
 - (a) Evaluation of Hazard Trees in Urban Areas, ISA Books, Nelda Matheny and James R. Clark.
 - (b) Urban Tree Risk Management, USDA Forest Service, Northeastern Area.
 - (c) ANSI Tree Risk Assessment.

11-4. ~~PERMIT PROCEDURE~~-PERMIT APPLICATION. Tree removal contractor registration and insurance.

- a. All tree removal contractors operating within the Township shall:
 1. Be licensed in accordance with the New Jersey Board of Tree Experts and Tree Care Operators Licensing Act; (LTE OR LTCO) per the Senate and General Assembly of the State of New Jersey C.45:15C-12
 2. Maintain the required insurance as described in 11-4 (b)
 3. Hold a current valid registration with the Township of Millburn, as outlined in section 11-11

- b. A tree removal contractor shall carry and provide proof of the following insurance coverage: \$2,000,000 property damage and bodily injury insurance per incident; \$300,000 automobile insurance per incident; and workers' compensation insurance in such amounts as required by law. All tree removal contractors shall require their insurers to provide the Township with a minimum of 30 days' advance notice of the cancellation of any required coverage. Upon the cancellation of any of the required insurance coverage, the tree removal contractor's registration shall automatically be suspended, and the tree removal contractor shall thereafter be prohibited from performing. Upon the submission of proof of satisfactory proof of insurance coverage, licensure in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act, and a certification that the tree removal contractor has read, understands, and will comply with all requirements of this rule, then the Township Clerk or designee shall register the tree removal contractor as approved to do business in the Township.

11-5 - PERMIT PROCEDURE.

- a. Any person wishing to obtain a Tree Removal Permit shall make application to the Enforcement Officer by filing a written application and paying such fees as are set forth in Section 11-6

Any person desiring to cut or remove any tree or trees or to place machinery, material or temporary soil deposit or regrade soil within the dripline of any tree within the Township shall file an application therefor with the Enforcement Officer on a form to be provided for the purpose. The application shall identify the lot or tract of land upon which the tree or trees are located; shall disclose the name and address of the owner or duly authorized agent of the owner; shall set forth the reasons for requesting a permit to cut or remove same; and shall acknowledge who owns the tree or trees and shall indemnify and hold the Township harmless against any and all liability, damages and costs resulting from or arising out of the applicant's cutting or removal of any tree or trees. The applicant shall attach to the application a survey or other document satisfactory to the Enforcement Officer which accurately sets forth the location of the tree or trees and evidence of the ownership thereof.

- b. When a permit is required, the applicant shall submit a Millburn Tree Restoration Plan with the application that identifies the location of the tree on the property survey, species and diameter of tree(s) to be removed, and proposed location and species of replacements according to the table in Section 11-~~15~~17 below.
- c. The Enforcement Officer shall review the application and provide a decision, which shall upon filing be deemed to constitute consent from the applicant to the Enforcement Officer and/or such person or persons as he/she may in writing designate for entry upon the land for the purpose of inspection. In reviewing any such application the Enforcement Officer may in his/her discretion consult the Shade Tree Advisory Board, the Township Engineer, and such landscape architect or geologist as he/she may deem necessary or advisable. Except as otherwise hereinafter provided in paragraph d within twenty (20) business days excluding Saturdays, Sundays and legal holidays from the filing of an application hereunder, the Enforcement Officer shall endorse his/her decision upon the application, and in case of partial or complete disapproval, shall set forth the basis for such decision. In addition, where appropriate, the Enforcement Officer shall indicate on such application guidelines and preventive measures to be taken to preserve from injury or destruction trees not sought to be cut or removed. Among the conditions which the Enforcement Officer may impose on a permit are the requirement of a performance bond in the amount of the value of the trees to be preserved as appraised by a New Jersey certified tree expert, which bond shall be released upon issuance of a Certificate of Occupancy, and the requirement of replanting trees or shrubs if trees which provide buffer, reduce soil erosion, or serve other purposes consistent with the provisions of Section 11-1,

are to be removed. Any application approved, in whole or in part, shall automatically become a permit in accordance with the terms of the endorsement. Any permit not acted upon within three (3) months from the date of such approval shall automatically expire.

- d. Upon the filing of any application for the cutting or removal of trees located on any lot or tract for which an application for a Building Permit or subdivision or site plan review is required to be submitted to the Construction Code Official, the Township Planning Board or the Board of Adjustment, the applicant shall furnish the Enforcement Officer with a copy of the Building Permit application or subdivision plat or site plan therefor, and the Enforcement Officer may withhold his/her endorsement pending receipt of written notice of official action with respect to such Building Permit, subdivision plat or site plan application. Within twenty (20) business days, excluding Saturdays, Sundays and legal holidays, of the receipt of such notice, the Enforcement Officer shall act upon the application as provided in the preceding paragraph c.
- e. The Enforcement Officer shall require the applicant to give notice to owners of real property within twenty (20') feet of a tree which is proposed to be cut or removed. Such notice shall be given by personal service or certified mail, return receipt requested, at least ten (10) days prior to any proposed cutting or removal of a tree. All required fees and bonds for any application, shall be paid and/or a copy provided to the Township prior to the issuance of the tree removal permit.
- f. Tree removal permit applications shall be filed at the Enforcement Officer's office and shall be completed in full. The application must be deemed complete and all required fees, as set forth in Section 11-6 ~~8~~, be paid prior to review.
- g. Inspections. After the application is complete and reviewed, the Enforcement Officer shall inspect the trees and property which are the subject of the permit application.
- h. The following trees are hereby designated as Historic trees:

(T) is Township Tree

Tree	Diameter	Circumference	Location
Quercus alba — White Oak	3.21' (d)		548 White Oak Ridge Road
Quercus alba — White Oak	4.25' (d)		25 Ridge Terrace
Quercus alba — White Oak	3.50' (d)		31 Knollwood Road
Quercus alba — White Oak	3.70' (d)		Birch Lane Island (T) Tag #3130
Quercus alba — White Oak	3.95' (d)		5 Northern Drive
Quercus alba — White Oak	5.34' (d)		18 Brooklawn Drive, Front
Quercus alba — White Oak	5.52' (d)		38 Kenilworth Drive
Quercus alba — White Oak	5.87' (d)		61 Great Oak Drive (T) Tag #4971
Quercus — Veluntina, Black Oak	4.50' (d)		2 Barberry Lane (T) Tag #2905

Fraxinus Americana — White Ash		13'4" (c)	1 Briarwood Drive
Quercus coccinea — Scarlet Oak		12'4" (c)	44 Windermere Terrace
Quercus coccinea — Scarlet Oak		14'11" (c)	26 Coniston Road (on Windermere)
Quercus alba — White Oak		14'11" (c)	40 Knollwood Road (Wells Lane) (T) Tag #4338
Quercus coccinea — Scarlet Oak		11'6" (c)	40 Knollwood Road (Wells Lane)
Fraxinus Americana — White Ash		12'8" (c)	104 Farley Road (T) Tag #5034
Ulmus Americana — American Elm		12'8" (c)	308 Millburn Avenue (Taylor Park) (T)
Quercus alba — White Oak		15'8" (c)	55 White Oak Ridge Road (Multi)
Quercus coccinea — Scarlet Oak		12'10" (c)	1 Park Place
Quercus alba — White Oak		13'1" (c)	1 Park Place
Platanus occidentalis — American Sycamore		12'9" (c)	Lackawanna and Glen Avenue (T)

11-5-11-6-STANDARDS.

1. Upon receipt of an application for cutting or removal of trees, the Enforcement Officer, and/or his /her designee, shall inspect the site on which are located the tree or trees sought to be cut or removed or otherwise protected within the intendment of this Chapter and the drainage and other physical conditions existing on the subject property and adjoining properties. The Enforcement Officer shall consider the following factors in deciding whether to issue such permit:

- a. Whether the proposed cutting or removal would impair the growth and development of the remaining trees on the applicant's property or adjacent property.
- b. Whether the proposed cutting or removal would adversely change existing drainage patterns impacting neighboring properties.
- c. Whether the proposed removal would allow soil erosion or increase dust.
- d. Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or would change the wooded aspect of the lot as viewed from the adjacent public road.
- e. Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area.
- f. The overall effect of removal of such tree or trees on the physical and aesthetic value of the property

and the neighborhood.

- g. Whether the area where such tree or trees are located will be occupied by a building or structure, a driveway or recreation area, a roadway, a drainage right-of-way, or a sewer line, or whether such area is within twenty (20') feet of any of the foregoing.
- h. Whether existing conditions or proposed changes in the topography of the area where such tree or trees are located have depressed land configuration or fill of land which shall be deemed injurious to the trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
- i. Whether the presence of the tree or trees is likely to cause hardship or will endanger the public or any adjoining property owner by reason of its being diseased or dead or for some other adequate reason within the intent of this Chapter.

11-7 TREE PROTECTION ON CONSTRUCTION SITES

Tree protection and tree protection zones on construction sites.

a. As used in this article, reference to “construction site” or “site” shall refer to any real property upon which any person (referred to herein as a “contractor”) proposes to or does engage in the construction, reconstruction or demolition of any building, structure or other improvement including landscaping located upon said real property.

b. Contractors shall comply with the provisions of this chapter on site during construction.

c. Contractors shall safeguard areas referred to herein as “tree protection zones” on the site during construction or by subject to a code violation/summons. The phrase “tree protection zone” is defined in section 22-2 above. 19

(1) No contractor shall be permitted to place or maintain, or cause to be placed or maintained, in or upon a tree protection zone, any stone, cement, sidewalk, mortar, building material, impervious material, dumpster or roll-off container, construction or storage trailer, portable toilet or other material, item or substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree. No contractor shall disturb the soil within a tree protection zone.

(2) A contractor shall be required to use fencing to protect areas identified as tree protection zones for every tree on site the removal or destruction of which is regulated under this chapter and for which the contractor has not received a permit allowing its removal or destruction.

11-6-8. FEES.

All tree removal permit fees shall follow the fee schedule below. A separate Tree Removal Permit shall be issued for each tree. There is no fee associated with removing a dead tree.

<u>Diameter of existing tree (inches)</u>	<u>Tree removal permit fees</u>
<u>10 to 18</u>	<u>\$50</u>
<u>18 to 27</u>	<u>\$100</u>
<u>28 to 36</u>	<u>\$150</u>

<u>37 to 45</u>	<u>\$200</u>
<u>45+</u>	<u>\$250</u>

Fees shall not be charged to an applicant with respect to a tract of land having a single or two-family dwelling occupied by the owner thereof located thereon. ~~Except as provided in the previous sentence, each applicant for a permit under this Chapter shall make a nonrefundable deposit with the Enforcement Officer of a fee of fifty dollars (\$50.00) for the first tree removal permit, and a fee of twenty dollars (\$20.00) for each additional tree removal permit.~~ A separate Tree Removal Permit shall be required for each tree.

11-7 9. APPEAL.

~~Any person~~ An applicant aggrieved by the decision of the Enforcement Officer shall have the right to appeal such decision to the Township Committee. A written notice stating the reasons upon which the appeal is based, must be filed with the Township Clerk within ten (10) days of the decision of the Enforcement Officer. ~~Such appeal shall be by written notice stating the reasons upon which the appeal is based, filed with the Township Clerk within ten (10) days of the decision of the Enforcement Officer.~~

The Township Committee shall hear the matter, upon notice to the applicant, within ~~thirty (30)~~ sixty (60) days after the filing of the notice of appeal. The Township Committee may in its discretion and upon complete review of the application and after hearing the testimony of the Enforcement Officer, the applicant and such other experts as may be appropriate, reverse, modify or affirm the aforesaid decision. If the Township Committee shall not act within ~~thirty (30)~~ sixty (60) days after the filing of the notice of appeal, the decision being appealed shall be deemed to have been affirmed by the Committee.

11-8 10. EXCEPTIONS.

Excepted from the provisions of this Chapter shall be:

- a. Any tree located on publicly owned land or public rights-of-way and removed by the public agency or its representatives.
- b. The first two (2) trees, provided that all of the following conditions are met:
 - 1. None of the trees exceed eighteen inches (18") in diameter or fifty-seven inches (57") in circumference at four feet (4') above the ground.
 - 2. The trees removed do not constitute more than fifty (50%) percent of the trees on the lot;
 - 3. No more than two (2) trees are removed within any twelve (12) month period; and
 - 4. All trees are located on a residentially zoned lot occupied by the owner.
- c. Dead or diseased trees upon certification by the Enforcement Officer or other qualified New Jersey Certified Tree Expert.
- d. Partially or completely fallen trees by acts of nature, or which endanger the public safety.
- e. Any tree located within the public right-of-way as shown on a subdivision map approved by the Township Planning Board or Board of Adjustment after consultation with the Township Forester; any tree located in an area to be occupied by a building, driveway, patio, pool or sports court as shown on a plan approved by the Planning Board or Board of Adjustment in connection with an application for subdivision or site plan approval; or any tree located in an area to be occupied by a building, driveway, patio, pool or sports court as shown on a plan approved by the Township Engineer for a permit related to a single family lot pursuant to the Grading, Drainage, Soil Erosion and Sediment

Control Ordinance.

~~11-9. (RESERVED)~~

11-11 REGISTRATION.

a. Within 30 days of the adoption of this article, the Town Clerk or their designee shall mail a copy of this article to persons and entities known to be in the business of maintaining, cutting, or removing trees within the Township.

b. Within 60 days thereafter, any company desiring to conduct the business of maintaining, cutting, or removing trees within the Township shall register with the Township.

c. A tree removal contractor shall pay an annual registration fee of \$150

~~11-10~~ 12. ENFORCEMENT.

The Enforcement Officer shall oversee all tree removals pursuant to an issued tree removal permit. The Enforcement Officer shall conduct adequate inspections of all sites for which a tree removal permit has been issued.

~~11-11~~ 13 APPLICABILITY TO TREE REMOVAL CONSTRUCTION COMPANIES; PERMIT REQUIRED.

All provisions of this Chapter shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or construction. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a permit is required pursuant to this Chapter unless a valid permit therefor is in effect and is displayed in accordance with the provisions set forth in Section ~~11-12~~ 14; such removal or work shall constitute a violation of this section and shall subject the person or company violating this section to all penalties provided herein.

~~11-12~~ 14. DISPLAY OF PERMIT; CARRYING OF PLAN OR AUTHORIZATION; RIGHT OF ENTRY.

- a. The applicant shall prominently display on the site the tree removal permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for ten (10) days thereafter. In addition, the person or persons cutting or removing trees, if other than the applicant, shall carry with him/her authorization from the owner or applicant authorizing such person to cut or remove trees. In the event that the trees are being cut or removed in accordance with a forest management plan or a soil conservation plan, a copy of the plan shall be in the possession of the person cutting or removing such trees.
- b. As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his/her premises by the Enforcement Officer and all law enforcement officers as necessary to effectuate the provisions of this Chapter, and such entries shall be deemed lawful. Failure to allow such entry shall be unlawful and shall constitute a violation of this Chapter and shall constitute failure to display the permit as required herein.

11-13 15. DUTIES OF ENFORCEMENT OFFICER.

The Enforcement Officer shall perform the duties set forth in this Chapter and shall be responsible for the enforcement of the provisions of this Chapter. In this regard, the Enforcement Officer is authorized and shall perform any necessary inspections and is further authorized and shall issue violation notices and shall sign complaints and provide testimony in the Municipal Court for violations of this Chapter.

11-14 16. VIOLATIONS AND PENALTIES.

- a. Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this Chapter shall, upon conviction of such violation, be subject to a penalty as stated in Section 1-5 of this Code, including a fine of up to two thousand dollars (\$2,000.00) for each offense, in the discretion of the Judge before whom conviction may be had. Each tree cut or removed in violation of this Chapter shall be considered a separate violation. Each violation of any of the provisions of this Chapter and each day the same is violated shall be defined and taken to be a separate and distinct offense.
- b. In addition to other remedies, the Enforcement Officer or other authorized official may institute any appropriate legal action to prevent a continuing violation of the terms of this Chapter.

11-15 17. MILLBURN TREE RESTORATION PLAN.

- a. Any tree used in a required planting must be at least two and one-half (2 1/2") inches caliper in diameter (for deciduous trees) or at least six (6') feet in height (for evergreen trees) and must be nursery stock, balled and burlapped and guaranteed for two (2) years from the date of planting. The Township Forester shall publish on the municipal website a suitable species list for replacement trees.
- b. The replacement trees shall be planted during the planting season into an appropriately sized tree pit or planting bed with space around it allowing it to grow into the dimension of a full-sized tree according to the species. The new trees shall be watered as required in this document.
 - The removed tree must be replaced according to the table below that is dependent on the diameter measured at a point four (4') feet above the ground of the existing tree that would be removed. If in the discretion of the Township Forester, due to available space, species of trees and/or required space between plantings a lesser number would be appropriate, the Township Forester may grant a downward adjustment.

Diameter of Existing Tree (inches)	# Replacement Trees	Diameter of Existing Tree (inches)	# Replacement Trees
From 10 to 12	1	From 27 to 30	7
From 12 to 16	2	From 30 to 33	8
From 16 to 18	3	From 33 to 36	9
From 18 to 21	4	From 36 to 39	10
From 21 to 24	5	From 39 to 42	11
From 24 to 27	6	From 42 and greater	12

In lieu of providing a Replacement Tree, the owner of real property must ~~contribute two hundred fifty dollars (\$250.00)~~ four hundred dollars (\$400.00) per replacement tree per replacement tree to Millburn, with such funds to be used for tree replacement.

11-~~16~~ 18. REMOVAL OF TOWNSHIP TREES; PERMIT.

Application for Tree Removal Permit:

- a. No Township tree or tree in the public right-of-way shall be removed or altered except by the Department of Public Works or by a tree removal contractor so authorized by contract with the Township or by a permit issued by the Department of Public Works.
- b. In situations where an adjacent property owner desires the removal of a Township tree which is not dead, dying or unsafe, the following shall apply:
 1. The property owner shall file an application for a tree removal permit, fully explaining the reasons for the tree removal;
 2. The Township Forester shall review the application and determine whether the tree may be considered for removal, and reject or approve the application and issue permit, including the reasons for the decision within twenty (20) business days.
 3. An application approved by the Township Forester shall be forwarded to the Superintendent of Public Works for further consideration. The Superintendent shall review the application and issue a permit or deny the application within five (5) business days.
 4. The tree removal application process shall take no longer than twenty (20) business days. If an application has not been granted or denied within twenty (20) business days, such failure shall be deemed a denial of the application for purposes of appeal to the Shade Tree Appeal Board, unless such period of time has been extended with the consent of the applicant.
 5. The applicant must replace the tree to comply with the Township of Millburn's goal of No Net Loss of trees by replanting according to the table provided in Chapter 11, Section 11-~~15~~ 17 or providing funding for the replanting of trees on Township property.

11-~~17~~ 19. CONDITIONS FOR ISSUANCE OF TOWNSHIP TREE REMOVAL PERMIT; FEE.

The Enforcement Officer shall issue the Township Tree removal permit, subject to the following conditions:

- a. The property owner will be responsible for the full cost of the tree, stump and debris removal.
- b. The Township shall be held harmless and indemnified from any damage or costs incurred as a result of the tree removal. A properly executed hold harmless and indemnification agreement shall be filed with the tree removal permit application.
- c. The tree removal shall be conducted by a fully-insured tree removal contractor, with a certificate of insurance naming the Township as an additional insured in the amount of one million dollars (\$1,000,000.) Commercial General Liability ("CGL") submitted with the application.
- d. The tree removal contractor shall comply with all State, O.S.H.A. and A.N.S.I. line clearance standards.
- e. The tree removal contractor shall notify the Township Police Department prior to the temporary closing of any street required for the safe removal of a Township tree, and shall receive the written approval of the Police Department.
- f. As a condition of granting a permit to remove a Township tree, the tree removal applicants shall ~~provided~~ provide financial compensation to the Township for a replacement tree in advance of the

written authorization to remove the Township tree. The species, size and location shall be approved by the Township Forester.

- ~~g.~~ Each applicant for a permit to remove a Township tree shall pay a permit fee of ~~one hundred (\$100.00) dollars.~~ two hundred (\$200.00) dollars

11-~~18~~ 20. DENIAL OF PERMIT; RIGHT OF APPEAL.

An applicant shall have the right to appeal any denial of a Township tree removal permit to the Township Committee.

- a. The appeal shall be submitted in writing within ~~fourteen (14)~~ ten (10) days of the decision of the Forester.
- b. The Township Committee may seek the advice of the Environmental Commission, the Township Forester, the Township Engineer, the Superintendent of Public Works or such other experts as it deems appropriate.
- c. The Township Committee shall, within ~~forty-five (45)~~ sixty (60) days of the filing of the appeal, adopt a resolution that either affirms the denial being appealed or directs the Department of Public Works to issue the permit for removal with whatever conditions the Township Committee deems appropriate.

11-~~19~~ 21. MAINTENANCE OF TOWNSHIP TREES AND SHRUBS.

All Township trees and shrubs located on property owned by the Township shall be maintained solely by the Department of Public Works.

- a. All Township trees and shrubs not located on property owned by the Township, but on properties owned by the Board of Education or by some other public Township body, may be maintained by the Department of Public Works as is required for the general public welfare.
- b. The Superintendent of Public Works shall be empowered to authorize garden clubs, individuals or civic associations to adopt certain Township trees and shrubs and flower beds for care and maintenance, when he/she deems it in the public interest to do so.

11-~~20~~ 22. PROHIBITED ACTS; VIOLATIONS AND PENALTIES.

- a. It shall be unlawful to commit any of the following acts with respect to Township trees without the prior written permission of the Township Forester:
 1. Cut, prune, break, injure, alter or remove any Township tree in any way; or cut, unduly disturb, regrade or interfere in any way with any root of a Township tree.
 2. Spray any Township tree with a chemical.
 3. Fasten any rope, wire, sign, or other device to a Township tree or to any guard about such a tree, or install any nails, screws, spikes, hooks, or fasteners of any type whether into or on or around any Township tree or part thereof.
 4. Install, remove or injure any guard or device placed to protect any Township tree.
 5. Close or obstruct the area encompassing the dripline so as to restrict the access of air, water and fertilizer to the roots of such tree.

6. String any wires or lines from one Township tree to another or to any other point.
- b. The Township Forester shall grant written permission if the activity for which such permission is requested is, in his/her opinion in the public interest and not likely to materially injure any Township tree.
 - c. Any damage to any Township tree by machines, objects, autos, etc. shall constitute a violation of this Chapter.
 - d. No person shall move, or cause to be moved, any building or large object along any street without having first obtained a valid permit from the Superintendent of Public Works who, if he deems necessary, may require a bond or cash deposit to be furnished in an amount sufficient to cover any damage to, or destruction of, Township trees on such street or streets as a result of such moving operations.
 - e. The provisions of this Chapter are not to be construed as requiring the Township to maintain, replace or move any sidewalk not located on property owned by the Township. Property owners shall comply with subsection 15-7.5 of this Code in relation to sidewalk repair or replacement within the dripline of Township trees.
 - f. Any violation of this Chapter shall be punished as provided by Section ~~11-14~~ 11-16 of this Code.

Ordinance 2671-24

Introduced: 4/16/2024

Published: 4/25/2024

Public Hearing/Adopted: 5/21/2024

Published: 5/30/2024

ATTEST:

Christine A. Gatti, Municipal Clerk

MILLBURN TOWNSHIP

By: _____
Annette Romano, Mayor

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the 21st day of May, 2024.

Christine A. Gatti, RMC
Municipal Clerk