

5/22/24—Accepting Changes from 5/7/24 Meeting and Incorporating Amendments from 5/21/24 Council Meeting

AN ORDINANCE REPEALING AND REPLACING CHAPTER 25, SECTIONS 27 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE AND ESTABLISHING CHAPTER ___ FOR ENVIRONMENTAL PROTECTION (TREE PROTECTION, REMOVAL AND REPLACEMENT)

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY that Chapter 25, Sections 27 of the Revised General Ordinances of the Township of West Orange be and are hereby **repealed** and **replaced** with the newly established Chapter ___ Section ____ of the Revised General Ordinances of the Township of West Orange, which establishes a Chapter dedicated to environmental protection in the Township of West Orange, and shall state as follows:

§ ___-1: Title

This Section shall be known as the “Tree Protection, Removal and Replacement Ordinance of the Township of West Orange”

§ ___-2: Findings and Purpose

a. A 2023 study commissioned by the Township of West Orange found that the tree canopy in West Orange has been dramatically declining and will continue to decline in future years without replanting and renewing protections for the tree canopy. The Township of West Orange finds that: trees are among the Township's most valuable natural resource assets, greatly enhancing the appearance of the Township and contributing to its suburban residential character; the integrity of Township and regional water resources is substantially affected by development on constrained land (e.g., steep slopes, wetlands and reduced depth to groundwater), tree removal, soil disturbance, stormwater management and the general use of land resources; the preservation, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation, reduces stormwater runoff and the potential damage it may create, increases groundwater recharge thus enhancing the groundwater supply to streams and wetlands and the yield of water supply wells, aids in the removal of pollutants from the air and assists in the generation of oxygen, provides a buffer and screen against noise and pollution, provides protection against severe weather, dramatically reduces “urban heat effect,” aids in the control of drainage and restoration of denuded soil subsequent to construction or grading, provides a haven for birds and other wildlife and otherwise enhances the environment, protects and increases property values, conserves and enhances the Township's physical and aesthetic appearance, and generally protects the public health, mental health, and safety as well as the general welfare.

b. Numerous governmental, professional, educational and business sources have cited the importance of trees to our well-being: "One acre of forest absorbs six tons of carbon dioxide and puts out four tons of oxygen, enough to meet the annual needs of 18 people." (U.S. Department of Agriculture). In one study, 83% of realtors expressed the belief that

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mature trees have a "strong or moderate impact" on the salability of homes listed for under \$150,000 and on homes listed for over \$250,000 this perception increased to 98% (American Forests, Arbor National Mortgage). Healthy, mature trees are said to add an average of 10% to a property's value (USDA Forest Service). "Landscaping, especially with trees, can increase property values as much as 20%." (Management Information Services/ICMA). "The net cooling effect of a young, healthy tree is equivalent to 10 room-size air conditioners operating 20 hours a day." (U.S. Department of Agriculture). "If you plant a tree today on the west side of your home, in five years your energy bills should be 3% less. In 15 years the savings will be nearly 12%." (Dr. E. Greg McPherson, Center for Urban Forest Research). "Trees properly placed around buildings can reduce air conditioning needs by 30% and can save 20% to 50% in energy used for heating." (USDA Forest Service). "In laboratory research, visual exposure to settings with trees has produced significant recovery from stress within five minutes, as indicated by changes in blood pressure and muscle tension." (Dr. Roger S. Ulrich, Texas A&M University).

c. The purpose of this section is to protect and foster the existence and health of trees growing within the Township's borders, to preserve the maximum possible number of trees in the development of a site or lot; to protect specimen trees; to encourage innovative design and grading to promote the protection of existing trees, and to prevent indiscriminate, uncontrolled and excessive removal and cutting of trees, as well as land use activities inconsistent with accepted arboricultural practices, that contribute to the destruction or result in permanent injury to trees upon lots and tracts within the Township. The standards and procedures established by this chapter are intended to furnish criteria for the use of Township personnel, boards, committees, commissions and officers in evaluating applications involving tree removal for site plan, subdivision and other development approvals. They are further intended to inform those with interests in real property in the Township of the requirements for trees located in the Township. The purpose of this section is to protect trees, the environment, and owners of real property who would be affected adversely by the removal of trees from property belonging to another person. The issuance of permits is a procedure designed to effectuate these goals. In addition, the Tree Replacement Fund in no way relieves the Township from a yearly budgetary allocation dedicated to planting new trees in the Township.

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§ ___-3 (Definitions)

The following definitions shall apply to this chapter:

APPLICANT—Owner of property or person with authority to apply for a Tree Removal Permit on any Lot.

APPEAL—The process by which an applicant may contest the grant or denial of a tree removal and replacement permit. Appeals shall be considered by the Township of West Orange Land Use Board in accordance with § 7, herein.

BUILDING—Any structure constructed for the support, shelter, enclosure of persons, animals, and/or a combination of materials containing a roof that is used to form a structure for either use, occupancy, and/or habitation.

CONSERVATION EASEMENT — A legal covenant restricting the use of land or natural features of the land that is described in the property deed and shown on a filed plat.

CROWN REDUCTION—Pruning (as defined herein) of the tree reducing the height or scope of the tree.

DBH — The measurement of the diameter of the trunk of a tree planted in the ground taken 4.5 feet from ground level on the uphill side of the tree.

DEVELOPMENT APPLICATION — An application filed with the Township Planning Board or Board of Adjustment pursuant to the Municipal Land Use Law and the Township land development ordinances for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-3.

DRIP LINE — A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground beneath.

EMERGENCY CONDITIONS—Shall mean when trees are hazardous and the Township Forester and/or a Qualified Tree Expert determines that the non-viable tree will cause an unacceptable risk of damage to person or property because of extreme wind, stormwater or other weather events.

EMERGENCY TREE REMOVAL AND REPLACEMENT FORM—A form completed by the Applicant provided to the Township which shall be submitted to the Township Forester if tree(s) are removed under Emergency Conditions pursuant to this Chapter. Trees removed under emergency situations must be replaced in accordance with the requirements of this Ordinance.

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ENDANGERED OR THREATENED SPECIES — Any species of tree or animal which has been determined by the Federal Fish and Wildlife Service or the State of New Jersey to be endangered or threatened.

IMPROVED LOT — A parcel of land with a building or other physical improvements.

INVASIVE VINE—Non- native vine that will climb up the tree and cause damage to the tree.

LAND USE BOARD — The Planning Board or Zoning Board of Adjustment of the Township of West Orange.

LOT—A designated parcel, tract of land established in the record as of local and county registers of deeds by plat, deed, subdivision, zoning lot of record, or as otherwise permitted by law.

MAJOR TREE — A tree species with a mature height of at least 50 feet.

MINOR TREE — An evergreen tree, ornamental tree or other small tree that is not defined as a Major Tree.

NONVIABLE TREE — A hazardous tree that a Qualified Tree Expert and/or the Township Forester determines is dead, dying or otherwise non-viable.

PERSON — The owner of a parcel of real estate or any other individual, group, company, firm, corporation, partnership, association, society or other legal entity.

PROPERTY LINE TREE—Shall mean a tree whose tree-trunk is on more than one Lot and/or on the boundary of the Lot.

PRUNING—Pruning is the selective removal of branches or limbs of a tree.

QUALIFIED TREE EXPERT — A New Jersey Licensed Tree Expert pursuant to N.J.S.A. 45:15C-11 *et seq.* and is registered by the Township.

REPLACEMENT TREE — A native tree species approved by the Township Forester and of nursery grade, properly balled and burlapped, untreated with herbicides or pesticides and meeting the minimum measurements of a major or minor tree.

SPECIES — The common name of a tree.

SPECIMEN TREE — A tree in good health of unusual or exceptional form, size, age or shape for its species, including but not limited to those included on New Jersey's Big Tree List, or database, published and coordinated by the New Jersey Forest Service, or having a champion tree point total (girth in inches plus height in feet, plus one quarter of

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average crown spread in feet) within 10% of the point total of a tree of the same species listed in New Jersey's Big Tree List, published in "New Jersey's Big Trees," by the New Jersey Forest Service.

STRUCTURE — A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, including but not limited to homes, buildings, above-ground tanks, pools, sheds, signs, fences, and towers.

STREET TREES OR SHADE TREES—A tree planted in a Township right-of-way within ten (10) feet of a curb.

SURROUNDING LOTS—The Lots immediately contiguous to the Applicant's Lot and the three (3) Lots immediately across the street from the Applicant's Lot, provided they are within one-hundred (100) feet of the Applicant's Lot. If the Applicant's Lot is located on the corner of a street, then the Surrounding Lots shall include each Lot contiguous the Applicant's lot, and the three (3) lots nearest to the Applicant across both roadways, provided they are within one-hundred (100) feet of the Applicant's Lot.

TOWNSHIP FORESTER—The Township-designated person primarily responsible for enforcing this chapter and who is qualified to do so by having the status of a Qualified Tree Expert; appointed by the Township of West Orange to implement this chapter and to carry out other related responsibilities as the Township may provide, including, but not limited to, developing and recommending (i) Township Woodlands Retention and Protection Plan; (ii) Township Tree Inventory; and (iii) Planting Schedule.

TREE — A self-supporting perennial woody plant having a diameter of at least 4 inches measured at a point 4.5 feet (or 54 inches) from the ground at the base of the tree on its uphill side.

TREE CANOPY—Tree canopy means the layer of leaves, branches, and stems of trees that cover the ground when viewed from above and that can be measured as a percentage of a land area shaded by trees.

TREE OF HEAVEN—(*Alianthus altissima*) An invasive tree that attracts Japanese Spotted Lantern flies which pose a serious threat to the native ecosystem.

TREE REMOVAL NEIGHBOR NOTIFICATION FORM – A form required to be completed by an Applicant seeking to remove any trees. The applicant shall certify that that the Tree Removal Neighbor Notification Form has been delivered to all neighbors who own Surround Lots, as defined herein, to the Applicant's property line in accordance with this Chapter.

TREE REMOVAL AND REPLACEMENT APPLICATION—A form completed by the Applicant provided by the Township which shall be submitted to the Township Forester in accordance with Chapter **XXX**, § 5.

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TREE REMOVAL AND REPLACEMENT PERMIT—A permit issued by the Township Forester to an Applicant who complies with all tree removal and replacement procedures set forth in this Chapter.

TREE REPLACEMENT FUND—A dedicated fund established pursuant to this chapter. The purpose of the fund is to permit any applicant who removes a viable tree and demonstrates lack of feasibility in replanting replacement trees on-site the ability to pay a fee to the Fund. The amount of the fee that the applicant shall contribute must be made in accordance with the provisions of this chapter; specifically Chapter **XXX**, § 8.

VOLCANO MULCHING—Piling mulch against the trunk of a tree in the shape of a volcano causing tree roots to circle the trunk and subsequently weaken the tree. Thus, the tree root flare, which is the connection with the trunk root and the surface of the ground, shall remain visible at all times.

§ ___-4: Tree Removal and Replacement Permits

a. No person shall be granted permission to remove more than two (2) trees within a twenty-four (24) month period, however, if a person desires to improve their property by removing more than two (2) trees within twenty-four (24) months, the applicant shall provide an application to the appropriate department along with a tree removal and replacement application. No person shall cut, remove, or engage in activities that encroach upon the health of a tree or remove a tree with a DBH two-and-a-half (4”) inches or greater without first having been issued a Tree Removal and Replacement Permit from the Township. To obtain a permit, the Applicant must comply with the procedures set forth in Chapter **XXX**, § 5 and any replacement procedures in § _____, 8.

1. If any tree(s) sought to be taken down that are delineated by the Township Forester as viable or non-viable, the person seeking removal or who has removed tree(s) must comply with the tree replacement provisions set forth in Chapter **XXX**, § 8 and the Chart at Table “**A**;” unless the tree(s) removed are replanted on the Lot where the tree removal occurred.

2. All Tree Removal and Replacement Permits issued shall be posted on the tree(s) to be removed and in the property owner’s front door/window, so the tree removal permit is visible to any member of the public not less than seven (7) business days prior to removal.

3. For non-development applications, the Township Forester shall decide to grant or deny a Tree Removal and Replacement Permit Application within 30 days of submission and shall notify the applicant and any objectors who have contacted the Township Forester. Application(s) made in connection with a development

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application shall comply with the procedures set forth in Chapter **XXX**, § 4(e) and shall be adjudicated by the Land Use Board. If the application is granted, the permit shall be issued by the Township Forester.

4. Permits granted under this section shall run with the land and shall remain in force and effect for 12 months from the date of issuance. Any permit not acted upon within a period of 12 months after issuance shall become null and void.

b. Prohibitions. Notwithstanding Subsection (a) above, no person shall do any of the following:

1. Cut down or remove any tree within wetlands, flood hazard areas, riparian zones, or other areas protected by state or federal law or applicable EPA or NJDEP regulations;

2. Cut down or remove any tree within a conservation easement;

3. Engage in activities which could cause a tree to die, including but not limited to topping, grade cut or fill, soil compaction within the drip line, chemical contamination, excessive alterations to established drainage patterns or mechanical damage.

4. Cut down or remove any tree on a slope with a grade of 10% or greater on a slope where vegetation is presently stabilizing soils.

5. Cut down or remove any tree unless it is performed by a Qualified Tree Expert and who shall be registered with the Township of West Orange pursuant to § 5-27.1 *et seq.*

6. Perform street, curb and sidewalk construction or repairs unless utilizing methods that protect the roots and trunk of a tree, such as manual excavation, reducing the curb, curving sidewalks around a tree, and modifying driveway aprons to accommodate trees as directed by the Township Forester or Township Engineer.

7. Remove trees within one hundred (100) feet of a ridgeline.

8. Remove trees which will impair the growth and development of the remaining trees on the applicant's Lot or on adjacent Lots.

9. Remove trees if tree removal will negatively alter existing drainage patterns and stormwater runoff.

10. Remove tree if it will result in soil erosion.

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11. Remove trees if it would increase the amount of stormwater runoff and/or negatively affect stormwater runoff patterns on any Lot(s), whether contiguous or not.
12. Remove trees if it would constitute a significant change in the screening between existing or proposed structures on roads and/or adjacent Lots.
13. Remove trees where it would alter topography of the area where such tree(s) are located and will create conditions which may be injurious to the trees or other trees located nearby.
14. Remove trees where it will impair suitable habitats and migratory zones for endangered or threatened species animals.
15. Engage in activities that cause harm to the health of the tree, including but not limited to, volcano mulching, cutting off light, water, or air, and/or fail to remove invasive vines or the invasive Tree of Heaven which harbors Japanese Spotted Lantern Flies which cause harm to native species of trees.

c. Specific prohibitions related to construction activities:

1. In connection with any construction, prior to the issuance of a building permit or start of construction, snow fencing or other protective barriers shall be placed around trees that are not to be removed. The protective barriers shall be placed at the outermost edge beyond the drip line or tree canopy. All protective barriers shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities performed subsequent to the removal of the barriers shall be accomplished by hand labor and only using light machinery where necessary.
2. Storing and placing building material or debris or placing construction equipment within the drip line.

d. Exemptions. The following are exempt from the permit requirement of Subsection (a) above:

1. Property owners may remove hazardous or non-viable trees under Emergency Conditions prior to obtaining a Tree Removal and Replacement Permit. However, following the emergency removal of the tree or trees, the property owner or agent thereof shall complete the Emergency Tree Removal and Replacement Form within seven (7) days of the removal. The person seeking emergency removal shall provide photographic and written proof of the Emergency Conditions by the Qualified Tree Expert to the Township Forester and

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include a hazard tree evaluation form at that time. Tree stumps must be preserved for inspection by the Township Forester and all removed tree(s) must be replaced on a one-to-one ratio within two-years of removal.

2. Activities lawfully conducted on public lands or rights-of-ways by or on behalf of a local, county, state, federal or other governmental agency or entity, or a utility company, provided however, that to the extent possible, such entity shall provide a courtesy review of any tree removal and replacement to the Township Forester.

3. Tree removal in conjunction with a Woodland Management Plan(s) must be approved by the N.J. Forest Service.

e. Development applications. Every development application filed with the Land Use Board that proposes tree removal and replacement shall:

1. Preserve fifty (50%) percent of the tree canopy on each developed Lot, and seventy (70%) percent on any undeveloped Lot.

2. Comply with all prohibitions and procedures listed in this Ordinance including but not limited to, providing the Township Forester and Land Use Board with a report from a Qualified Tree Expert outlining the reasons stated for the removal of tree(s) on the Lot, a tree replacement plan, and response from the Township Forester outlining their approval or disapproval of the tree removal application. If replanting or replacement of trees is performed offsite, the developer shall, apart from the fees paid into the Tree Replacement Fund, hire a landscape architect, licensed by the State of New Jersey, to oversee the species, quantities and placement of replacement trees. This shall be completed prior to the Construction Official and/or appropriate Township Official having issued a Final Certificate of Occupancy or within six (6) months of completion of the development. A bond shall be posted to ensure compliance and two year survival of the replanted trees.

3. Install protective fencing around the remaining trees and ensure the provisions of Chapter ____, Section 4(c) are complied with.

4. Obtain a written report indicating that the Township Engineer or his/her designee(s) has inspected the site and certified that all soil erosion and sediment controls and stormwater runoff controls required by this Chapter and applicable laws have been installed and completed. Copies of the certification shall be delivered to both the applicant and the Township Forester by the Township Engineer immediately after it is completed and made available to the public upon request;

5. Specify that no trees may be removed until after installation of stormwater runoff controls as required by this Ordinance, by Title 7, Chapter 8, § 7:8-5.4 and

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by Title 2, Chapter 90, Subchapter 1 of the New Jersey Administrative Code, respectively or any other applicable laws.

6. Provide written notice to the Township Forester and the Land Use Board not less than fourteen (14) days before any planned tree removal.

7. Ensure the Township Forester shall be onsite during all tree removal and replacement activities in connection with the development application. A stop work order may be issued by the applicable authority under this Chapter if the Township Forester is not onsite during the planned tree removal activities. Prior to the applicant's completion of its development project, the development applicant must have written permission/documentation from the Township Forester that the tree replacement has been completed in accordance with the development applicant's approved plan.

8. All parking lot owners shall maintain trees in compliance with Township Code § 25-12.1(o) and shall create 50% shade in the parking lots within twenty-five (25) years.

f. If the proposed trees for removal are deemed by the Township Forester and/or a Qualified Tree Expert to be Property Line Tree(s), the owner of the Lot(s) are jointly and severally responsible for any costs associated with the removal of the Property Line Tree(s) and any replacement costs. If a Property Line Tree is unlawfully removed, both owners of the Lots where the Property Line Tree is located can be held liable pursuant to Chapter XXX, § 10.

§ ___-5: Application Procedure for Tree Removal and Replacement Permits

a. Every application for a tree removal and replacement permit shall be made by submission of the following:

1. Tree Removal and Replacement Application. The Applicant or Applicant's representative shall arrange for an informal in-person inspection with the Township Forester. The Applicant shall clearly mark the trunk of each tree proposed to be removed at the height of four and one-half (4.5) feet above the ground so that such tree or trees may be inspected more easily by the Township Forester at any time after the initiation of the application procedure set forth herein. The Township Forester will explain this portion of the Ordinance and provide advice as to the condition, value and recommended care of other trees on the Applicant's Lot to satisfy the educational purpose of the Chapter. Upon request, the Township Forester shall assist any Applicant with completing the Tree Removal and Replacement Application required by this section. If the tree replacement is to be done on-site, a survey must be attached to the application to show the exact location of the replacement tree(s). The Township Forester's inspection shall confirm the location of the tree or trees sought to be removed, the reason for the application, and advise the Applicant whether the Tree Removal and Replacement Permit would be granted or denied based on the prohibitions contained in this ordinance.

2. An Applicant must submit to the Township Forester a Tree Removal and Replacement Application on forms provided by the Township. The Township Forester may request additional information to process the application.

3. The Tree Removal Neighbor Notification Form must be submitted to the Township with the Tree Removal and Replacement Application. The form shall be submitted in accordance herewith to all neighboring property owners who own the Surrounding Lots, as defined herein. The Applicant shall submit a written certification confirming the same. Failure to provide notice under this section shall be deemed a violation subject to enforcement under Chapter **XXX**, § 10.

4. After the Township Forester and the owners of the Surrounding Lots receive the Tree Removal Neighbor Notification Form, the owners of the Surrounding Lots shall have seven (7) days to object to the proposed tree removal in writing articulating the basis for the objection. The Township Forester will have twenty-one (21) days thereafter to review any and all objections, the Tree Removal and Replacement Permit Application, and all other relevant documents to make a determination to grant or deny the Tree Removal and Replacement Permit.

b. The fees associated with the filing of a Tree Removal and Replacement Application shall be prescribed by Resolution, but shall be no less than \$100 per application A Tree

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Removal and Replacement Application for a development application shall be prescribed by Resolution but no less than \$1,000 per application.

c. Every development application or application before a Land Use Board shall include a tree removal and replacement plan which shall include a map drawn to scale clearly showing the number and location of all trees to be removed and number and location of trees to be replaced. A Qualified Tree Expert's report addressing the factors set forth in Chapter **XXX** § 6 shall be submitted with each application.

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§ ___-6: Factors to Address in Granting or Denying a Tree Removal and Replacement Permit

Factors to be Considered Where Tree Removal And Replacement is Sought. In deciding whether to issue a Tree Removal and Replacement Permit, the Township Forester shall consider whether the proposed tree removal and replacement complies with the provisions of this Ordinance, the prohibitions of tree removal set forth in Chapter **XXX**, § 4(b)-(d), and the tree replacement requirements set forth in Chapter **XXX**, § 8. In connection with a development application, an Applicant shall file a written report by a Qualified Tree Expert explaining how/why the prohibitions set forth in Chapter **XXX** § 4(b)-(e) are not violated and include a plan for tree replacement in accordance with Chapter **XXX**, § 8.

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§ ___-7: Appeal of Denial of Tree Removal and Replacement

Denial and granting of any application for a Tree Removal and Replacement Permit may be appealed directly to the ~~Planning-appropriate B~~board with written notice to the Secretary of the ~~Planning-appropriate B~~board within forty-five (45) days of the decision by the Township Forester to grant or deny an application. Only those who own the Surrounding Lots who were required to be sent the Neighbor Notification Form shall have the right to appeal the decision of the Township Forester to grant a tree removal permit. Notice of the appeal shall be provided to all property owners who own a Surrounding Lot. The appellant who files the Appeal shall include a written report by a Qualified Tree Expert establishing why and how the Applicant has or has not complied with the factors set forth in § 6. It shall constitute a separate violation of the Ordinance if a tree is removed during the appeal process. All costs and fees associated with the Appeal shall be paid by the Appellant.

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§ ___-8: Tree Replacement

Every tree removed shall be replaced pursuant to this Chapter. In no instance is tree replacement to be considered a penalty, but rather the minimum requirement(s) to implement the purposes of this section. Tree replacement shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this section. Tree replacement required by this Chapter shall be completed within six months of tree removal unless the Township Forester or Land Use Board grants an extension until the next appropriate planting season. If any replacement tree planted pursuant to this section is removed, fails to thrive, or dies within two years, it shall be replaced by the property owner within six months and the same shall be viable for an additional two (2) years.

a. Tree replacement, as approved by the Township Forester, Land Use Board, and/or Township Engineer, shall be required to comply with Table “A,” except that hazardous or non-viable trees removed pursuant to Emergency Conditions shall be replaced on a one-to-one basis at the approval of the Township Forester. Tree Replacement shall occur in the following priority to amplify the goals of this Chapter to maintain the existing tree canopy within specific areas of the Township:

1. The owner/applicant shall replant tree(s) on the Lot that which they were removed.
2. If the tree cannot be replaced on the Lot or an adjacent Lot, the applicant shall have the burden of demonstrating how such replacement on their Lot is not feasible. If the owner/applicant cannot replace tree(s) on the site that which they were removed, the owner/applicant may replant the tree(s) on the immediate adjacent properties or at another location as determined by the Township Forester.
3. If the owner/applicant is unable to replace tree(s) on the site that which they were removed or on the adjacent Lot(s), and the owner/applicant has less than three-fourths (3/4) of an acre of land, the owner/applicant shall pay into the Tree Removal and Replacement Fund in accordance with this Chapter.
4. If the owner/applicant has greater than three-fourths (3/4) of an acre of land, the owner/applicant must replace the removed trees on their Lot or an adjacent Lot in accordance with § 8(a)(1)-(2).

b. The Forester shall prioritize the Tree Removal and Replacement Fund to locations closest to the site of removal to amplify the goals of this Chapter. In furtherance of said goals, the Township Forester shall seek to prioritize replanting within 1,000 feet of the property line, and, if not feasible, anywhere within the municipality in accordance with Table “A.”

c. Tree Replacement Fund. Pursuant to this section, unless the Township Forester has approved replacement of the removed tree(s) on the permit holder’s property in

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accordance with Table “A,” the Township Forester shall condition tree removal upon payment to the Tree Replacement Fund, established hereunder. The Township Forester shall require payment to the Tree Replacement Fund if a person removes a viable tree as determined by the Township Forester which is not replaced on the same Lot, provided, however, that the applicant’s lot is less than three-fourths (3/4) of an acre.

1. **Tree Preservation and Replacement Fund:** A Tree Replacement Trust Fund dedicated to receive and disburse replacement tree fees when the permit applicant has conclusively demonstrated that it is not feasible to replace a tree(s) removed from the applicant’s lot with other qualifying tree(s) planted on that site in accordance with Table “A.” The Tree Replacement Fund may also accept contributions for its purposes from private or public sources. The amount to be paid in the Tree Replacement Fund shall be in accordance with Table “A” and shall be greater than the cost of on-site replacement both to encourage on-site tree replacement, the preferred approach under the Ordinance, and to assure that the Township is fully reimbursed for all fees and costs associated with off-site tree replacements. These fees shall be fixed by resolution and must be spent for tree replacements within one (1) year of the deposit into the account. All details of this fund shall be available to the public upon request. The Tree Replacement Fund in no way relieves the Township from a yearly budgetary allocation dedicated to planting new trees in the Township.

2. The amount to be paid to the Tree Replacement Fund shall be in accordance with Table “A” upon the approval of the Township Forester.

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TABLE A

DBH of Tree	Required Action	Amount to Tree Replacement Fund
4"-6"	Replace with one 2.5" inch native non-pesticide/herbicide treated tree with a minimum of 6-feet tall	To be prescribed by Resolution
6"-13"	Replace with either two 4" inch native non-pesticide/herbicide treated trees; or four 2.5" native non-pesticide/herbicide treated trees. Each tree shall be a minimum of 6-feet tall.	To be prescribed by Resolution
13"-22"	Replace with either three 4" inch native non-pesticide/herbicide treated tree; or six 2.5" native non-pesticide/herbicide treated trees. Each tree shall be a minimum of 6-feet tall.	To be prescribed by Resolution
23"-32"	Replace with either four 4" inch native non-pesticide/herbicide treated tree; or eight 2.5" native non-pesticide/herbicide treated trees. Each tree shall be a minimum of 6-feet tall.	To be prescribed by Resolution
Over 33"	Replace with either five 4" inch native	To be prescribed by Resolution

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	non-pesticide/herbicide treated tree; or ten 2.5” native non-pesticide/herbicide treated trees. Each tree shall be a minimum of 6-feet tall.	
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§ ___-9: Enforcement and Administration

In administering and enforcing this section, the Township Forester, the Township's Construction Official, Zoning Officer, Township Planner, Engineer, Chief of Police, or any other Township officer or designee, is hereby empowered to issue stop work orders whenever a claimed violation of this section is witnessed or reported.

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§ ___-10: Violations and Penalties

a. Any person, firm, partnership, corporation, association, or other legal entity violating any of the provisions of this article shall, upon conviction of such violation, be punished by a fine not to exceed \$2,000 for each offense, in addition to the required mitigation for each tree illegally removed. Each illegally removed or damaged tree shall constitute a separate offense. Violations of this Ordinance shall be heard in the Municipal Court of competent jurisdiction.

b. The removal of a tree in violation of this section shall automatically invalidate or void any existing tree removal permit(s) associated with a property and terminate the issuance of any future permits until the matter has been resolved and any required tree replacement has been completed. This provision shall be applicable to contractors, agents and/or persons who remove tree(s) without properly registering with the Township in accordance with Chapter 5, § 27.1 *et seq.*

c. In addition to the suspension of any active tree removal permit, any company, business, or other entity whom removes or damages any tree in violation of this Ordinance shall be subject potential suspension of their tree removal license within the Township as follows:

1. First Offense: 90-day suspension;
2. Second Offense: 180-day suspension;
3. Third Offense: One year suspension; and
4. Any offense thereafter: permanent suspension.

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§ ___-11: Severability, Repeal of Inconsistent Ordinances, and Effective Date

Any and all parts of ordinances which are inconsistent with any of the terms and provisions of this section be and the same are hereby repealed as to and to the extent of such inconsistency.

Any and all parts of ordinances which are inconsistent with any of the terms and provisions of this section be and the same are hereby repealed as to and to the extent of such inconsistency.

This section shall take effect upon final passage and publication as required by law.

SUSAN MCCARTNEY, MAYOR

**BILL RUTHERFORD,
COUNCIL PRESIDENT**

KAREN J. CARNEVALE, R.M.C., MUNICIPAL CLERK

INTRODUCED: January 23, 2024

ADOPTED:

5/22/24—Accepting Changes from 5/7/24 Meeting and Incorporating Amendments from 5/21/24 Council Meeting

Legislative History

The purpose of this ordinance is to repeal and replace Chapter 25, Sections 27 of the Revised General Ordinances of the Township of West Orange and to create a new Chapter of the Township Code for the purpose of protecting trees which are among the Township's most valuable natural resource assets, which greatly enhance the appearance of the Township and contribute to its suburban and residential character, which must be kept and maintained in good order to enhance the Township's physical and aesthetic appearance, and generally protect the public health and safety as well as the general welfare. Importantly, trees contribute positively to climate change, protection of the environment, and maintenance of storm waters.